

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 11, 2023

CASE NO(S):

OLT-22-003939

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

Appellant	Stanley Ralph
Subject:	Zoning By-law
Description:	Shoreline Preservation By-law to conform with the natural vegetative buffer policies in the County of Hastings Official Plan as approved in August 2018
Reference Number:	By-law 2022-005
Property Address:	683C Parchers Road
Municipality/UT:	Hastings Highlands/Hastings
OLT Case No:	OLT-22-003939
OLT Lead Case No:	OLT-22-003939
OLT Case Name:	Ralph v. Hastings Highlands (Municipality)

Heard: July 10, 2023, by Video Hearing

APPEARANCES:

Parties

Stanley Ford Ralph

Municipality of Hastings
Highlands

Counsel

Connor Harris
Sarah Spitz

Anthony Fleming
Spencer Putnam

**DECISION DELIVERED BY DAVID BROWN AND GREGORY J. INGRAM AND
ORDER OF THE TRIBUNAL**

[Link to Final Order](#)

INTRODUCTION AND BACKGROUND

[1] The matter before the Tribunal is an appeal filed by Stanley Ford Ralph (the “Appellant”) pursuant to s. 34(19) of the *Planning Act*, R.S.O. c. P.13, as amended (the “Act”), against the Municipality of Hastings Highlands (“Municipality”) decision which amended the Municipality’s Zoning By-law No. 2004-035 (“ZBL”) modifying shoreline protection and preservation measures within the Municipality (the “ZBA”).

[2] In December 2017, the County of Hastings (“County”) adopted an updated version of the County Official Plan (“COP”). The updated COP was approved by the Ministry of Municipal Affairs in August of 2018. The updated COP introduced, among other policies, new and revised policies with respect to shoreline protection and preservation for the County. These shoreline protection and preservation measures included an increase in the recommended shoreline setback and buffer from 15 metres (“m”) to 30 m around lakes, along rivers and other water bodies.

[3] In response to the new COP, and to bring the ZBL into conformity with the new COP, the Municipality passed By-law No. 2022-005 (“Shoreline Preservation By-law” / “SPB”) on May 4, 2022, to amend the ZBL revising the shoreline protection provisions within the ZBL and introduce the requirement for a 30 m setback and natural vegetative buffer around waterbodies and along watercourses.

[4] The SPB added two new definitions to the ZBL, “site alteration” and “steep and/or unstable slope” and replaced sections 5.9.2 and 5.9.3 of the ZBL with the following:

- 5.9.2 Notwithstanding anything in this Bylaw, no development, site alteration or septic tank installation including the weeping tile field shall be located or occur:
- i) within 30 metres (98.4 ft.) of the high water mark of a waterbody or watercourse, notwithstanding that such waterbody or watercourse is not shown on any Schedule forming part of this Bylaw; and

- ii) within 30 metres (98.4 ft.) of the toe and top of a shoreline or non-shoreline cliff, bluff or bank that is a steep and/or unstable slope; and
- iii) within 30 metres (98.4 ft.) of an Environmental Protection Wetland (EPW) Zone.

5.9.3 Shoreline Activity and Waterfront Use

- i) The provisions in subsections 5.9.1 and 5.9.2 shall not apply to buildings, structures and services requiring direct access to the water as an operational necessity such as a marina, marine facility, or other similar structure.
- ii) Notwithstanding subsection 5.9.1 and 5.9.2, the following shoreline uses will be permitted within 30 metres (98.4 ft.) of the high water mark or floodplain subject to all applicable provisions of this Bylaw:
 - a) Dock;
 - b) Boathouse; and
 - c) Boat launch.
- iii) It is prohibited to alter or remove the natural vegetation within the 30 metres (98.4 ft.) vegetative buffer to any shoreline of a waterbody or watercourse, except:
 - a) 25% of the shoreline frontage or up to 23 metres (75 feet), whichever is the lesser, for linear shoreline residential development;
 - b) 35% of the shoreline frontage for tourist commercial and institutional accommodation, waterfront contracting operations and waterfront landings;
 - c) 50% of the shoreline frontage for marinas; and
 - d) Where b) and c) are present on a lot adjacent to a waterbody or watercourse, the aggregate percentage of the shoreline devoted to those uses shall be a maximum of 50% of the shoreline frontage.

[5] The SPB also introduced a “Vegetative Buffer Adjacent to the Shoreline” requirement in the Limited Service Residential zone, the Limited Service Residential Island zone, and the Waterfront Residential zone and added additional regulations for Tent and Trailer Park uses and Hotels, Lodges, Housekeeping Cottages and Tourist Cabins uses in the Recreational/Resort Commercial zone.

[6] The Appellant owns a seasonal waterfront property at 683C Parcher Road which he purchased 55 years ago together with three adjacent parcels on Lake Kamanisseg in the Municipality. The Appellant advised that, together with other property owners on

Lake Kamaniskeg, he founded a landowner's group in the 1960s. The landowner's group has been active for decades undertaking projects that include purchasing water pumps for fire protection that have been placed around the lake, providing information to Lake Kamaniskeg property owners about septic system use and maintenance, and more recently planting trees around their Lake to replace those destroyed by a recent tornado.

[7] The Appellant attended virtual Open House Information Sessions and Council meetings conducted by the Municipality and filed multiple written submissions to Council prior to their passage of the SPB.

[8] A Case Management Conference ("CMC") was conducted by the Tribunal on October 22, 2022, in respect of the Appeal. At the CMC the Tribunal granted Participant Status to 47 individuals. The Tribunal received 33 Participant Statements for its consideration in respect of this matter.

[9] The Parties prepared an Issues List which was included in the Procedural Order issued by the Tribunal on November 25, 2022. The Issues List set out five issues to be adjudicated by the Tribunal which are summarized below:

1. Is the SPB consistent with the Provincial Policy Statement (2020) ("PPS"), and in particular policies 2.2.1 and 2.2.2?
2. Does the SPB conform to the COP, including but not limited to policies:

Fish Habitat:	4.2.4.1, 4.2.4.4
Erosion Hazards:	4.4.2
EP – Permitted Uses:	4.5.2.6
EP-W:	4.5.4.10
Servicing Policies:	5.4.4.2
Waterfront Policies:	5.4.5.3, 5.4.5.7, 5.4.5.8, 5.4.5.9,

Tent and Trailer Parks:	5.6.4.2
Land Acquisition:	7.11

3. Was the SPB developed with appropriate regard to matters of provincial interest, including but not limited to fire safety impacts; health and safety impacts; and environmental study of lake water quality, as set out in subsections 2(a), 2(h), and 2(o) of the Act?
4. Is the SPB good planning and in the public interest?
5. Does the SPB strike an appropriate balance between the public interest, including in matters of environmental protection, and the interests of private landowners, as required by subsection 2 (n) of the Act?

[10] Counsel for the Appellant advised that they are not intending to call any evidence with respect to the issue related to “land acquisition” or the premise of “expropriation without compensation” as referred to by the Appellant in his submissions.

LEGISLATIVE FRAMEWORK

[11] When considering an appeal under s. 34(19) of the Act, the Tribunal shall have regard to matters of provincial interest as set out in s. 2 of the Act. Further, as set out in s. 2.1(1) of the Act, the Tribunal shall have regard to the decision of the Municipality and the information it considered in making its decision. The Tribunal must be satisfied that the ZBA is consistent with the PPS and conforms to the COP in effect.

[12] In consideration of the above statutory requirements, the Tribunal must be satisfied that the Application represents good planning and is in the public interest.

SUBMISSIONS AND EVIDENCE

[13] The Tribunal qualified David Ashbourne, a Registered Professional Planner (“RPP”), to provide opinion evidence as an expert in land use planning on behalf of the Appellant.

[14] On behalf of the Municipality, the Tribunal qualified John Jardine, a Land Use Planner for the Municipality and a candidate member of the Canadian Institute of Planners and Ontario Professional Planners Institute, to provide opinion evidence as an expert in Land Use Planning. The Tribunal also qualified Dr. Robert Mackereth, a Research Scientist with the Ministry of Natural Resources and Forestry (“MNR”) having a background in aquatic ecology, as an expert in the area of Ecology and Victor Castro, a Supervisor in the Water Resources Unit of the Ministry of Environment, Conservation and Parks (“MECP”), as an expert in Limnology. Limnology was described as the study of inland lakes and watercourses and their physical, chemical, and biological interaction with the watershed.

[15] The Tribunal received a Joint Document Book which was marked as Exhibit 1 and a Compendium of Witness Statements, including the documents and reports on which the experts relied, and marked it as Exhibit 2.

Provincial Policy Statement, 2020

[16] Mr. Ashbourne and Mr. Jardine generally agreed that the SPB is consistent with the PPS and in particular sections 2.2.1 and 2.2.2.

[17] Mr. Jardine proffered that the policies in 2.2.1 b), f) and i) were particularly relevant given their focus on protecting water quality by minimizing potential negative impacts, through implementing appropriate restrictions for development, and ensuring stormwater management practices maintain vegetative surfaces. Mr. Jardine also referred to *The State of the Science Report*, dated August 2021, prepared by

Hutchinson Environmental Sciences Ltd. (“SOSR”) for the County of Haliburton. The SOSR provides a summary of research on the benefits of shoreline buffers and the benefits of a 30 m buffer to “maintain biological functions”. He also directed the Tribunal to the *Natural Heritage Reference Manual (2010)* (“NHRM”) issued by the MNRF which provides technical guidance for implementing the Natural Heritage policies of the PPS. Mr. Jardine advised that Table 11-3 in the NHRM recommends a minimum 30 m “natural vegetative buffer” for cold water inland waterbodies on the Canadian Shield. He proffered that the recommendations of the SOSR and the NHRM align with the provisions set out in the SPB with respect to the vegetative buffer.

[18] Mr. Ashbourne opined that the SPB is consistent with the broad, overarching statements in the PPS regarding the importance of the preservation of natural features and in particular those that are vulnerable and/or sensitive. He proffered that the PPS does not provide prescriptive direction as is reflected in the SPB.

[19] Dr. Mackereth testified about the ecological importance of shoreline forest areas explaining that the Riparian Zone is the transition between the forest area and the water body or watercourse. The Riparian Zone provides essential services to aquatic ecosystems. These services have been summarized in seven process areas:

- a. Erosion,
- b. Filtration,
- c. Infiltration,
- d. Isolation,
- e. Meandering,
- f. Shading, and
- g. Subsidization.

[20] Dr. Mackereth detailed these processes and proffered that the loss of the Riparian Zone negatively impacts aquatic habitat. He cited an example that the loss of filtration will increase the minerals entering the water and, in turn, the water quality will

deteriorate, thus damaging the aquatic habitat. He explained that the use of buffers as a management tool for maintaining water quality is very common to maintain the Riparian Zone services and sustainability of the function of the ecosystem.

[21] Dr. Mackereth acknowledged that there is no “one size fits all” approach to the required width of a buffer zone and advised that there are many variables that must be considered in determining the effective width of a vegetative buffer zone. He cited shoreline slope, waterbody size, soil type, landscape and forest type, size and type of development, water body type, and types of species as factors to be considered. Dr. Mackereth opined that a 30 m buffer width is a good standard given all the variables that may impact a buffer zone's effectiveness and he recognized that buffer widths can range from 10 m to 100 m when considering all the different factors. He opined that a 30 m buffer strikes a balance between providing sufficient natural riparian zone vegetation to maintain riparian services over time while minimizing restrictions on development and land use activities. Dr. Mackereth acknowledged that permitting the removal of such things as dead trees and invasive plant species within a buffer zone could be considered on a site-specific basis.

[22] Dr. Mackereth concluded opining that the SPB implements a vegetative buffer that is consistent with the NHRM recommendations and the PPS.

[23] Mr. Castro testified with respect to the vegetative buffer zone requirement of the SPB explaining that a buffer is a natural vegetated area that separates development from a waterbody. He opined that buffers are a best management practice as they filter run-off, stabilize shorelines, and provide support for aquatic habitats. A 30 m buffer in conjunction with stormwater management and improved septic system technology all contribute to improving water quality.

[24] Mr. Castro proffered that there is strong evidence in support of a minimum 30 m vegetative buffer and referred to several studies and reports including the SOSR. He proffered that the SOSR recommends a 30 m buffer as a minimum “as it does a better

job of protecting against a wider range of pollutants.” He also referred to the NHRM and the Lakeshore Capacity Assessment Handbook: Protecting Water Quality in Inland Lakes (“LCAH”) prepared by the MECP to provide guidance to municipalities for the management of development along the shorelines of Ontario’s inland lakes within the Precambrian Shield. Mr. Castro opined that these guidance documents both support and recommend a 30 m buffer and also support the policies within the PPS pertaining to environmental lake capacity and significant heritage features.

[25] Mr. Castro differentiated between a buffer and a setback, submitting that a buffer is a natural vegetative width located within a setback. A buffer is not intended to create a barrier. He proffered that the inclusion of the 25% opening within the buffer zone for residential owners contained in the SPB is reasonable as people will still need access to the lake or river and this opening or access provision will create an appropriate balance. Mr. Castro cited a study conducted by R. Reid and K. Holland titled, *The Land By The Lakes*, dated October 1997, which concluded that a 75% natural shoreline was a good target for protecting water quality, and referenced a quote from the report to emphasize the importance of a vegetative buffer with the relationship between water quality and development: “The physical structure and living communities on the land along a lake’s edge are as much a function of the lake’s ecosystem as the fish in its waters.”

[26] Mr. Castro opined that a buffer is something that individual landowners can do to protect their lake.

County of Hastings Official Plan

[27] The Planners provided contrasting opinions with respect to the conformity with the COP.

[28] Mr. Jardine opined that the SPB conforms with the COP and specifically referred the Tribunal to Sections 1.7.1, 1.7.2 and 1.7.3 of the COP. He proffered that the intent of these sections is to protect and manage water resources and natural heritage

features; promote sustainable development that is sensitive to natural heritage resources and landscapes; and support rural areas dependent on natural resources, including water.

[29] Mr. Jardine referred to policies in Section 4.2.4.1 (Fish Habitat) which provides a definition for Fish Habitat and Section 4.2.4.4 which requires a minimum 30 m setback along watercourses to protect fish habitat and that the setback is to remain undisturbed and naturally vegetated. Mr. Jardine opined that the SPB conforms to policy 4.2.4.4 of the COP as it prohibits development and site alteration including septic tank installation within 30 m of the high-water mark of a waterbody or watercourse.

[30] Erosion Hazards are addressed in policies contained in Section 4.4.2 of the COP and Mr. Jardine reviewed Sections 4.4.2.2, 4.4.2.3, 4.4.2.5., 4.4.2.6 and opined that the 30 m setback and buffer in the SPB conforms with and supports the intent of the COP. He proffered that a setback and vegetative buffer is an effective tool to address erosion hazards so that stabilizing vegetation is not lost as a result of development.

[31] Mr. Jardine directed the Tribunal to Section 4.4.2.3 noting, that where circumstances prevent compliance with the policy, the COP will permit a reduction in the setback to a minimum of 15 m and he acknowledged that relief may be sought through an Application for Minor Variance or Rezoning, subject to appropriate supporting reports and documentation.

[32] Mr. Jardine reviewed the Environmental Protection Land Use policies contained in Section 4.5 of the COP. He referred to Sections 4.5.1.2, 4.5.1.3 and 4.5.2.6 of the COP. He proffered that the intent of these sections is to emphasize the need for environmental protection in areas of water bodies and watercourses. In particular, he proffered that the intent and purpose of Section 4.5.2.6 is to restrict development and site alterations adjacent to water bodies. He opined that the SPB will regulate development and site alteration along shorelines with the 30 m setback requirement and the provision of a 30 m buffer thereby conforming to the COP. Section 4.5.4.10 requires

a minimum 30 m setback adjacent to lands designated Environmental Protection (EP) and 120 m to lands designated Environmental Protection – Wetlands (EP-W) with the support of an Environmental Impact Study (“EIS”). Mr. Jardine advised that the EIS would determine the required setback through the development application process. However, notwithstanding the EIS recommendation, the SPB requires that a minimum setback of 30 m be provided.

[33] Regarding Servicing Policies, Mr. Jardine referred to Section 5.4.4.2 of the COP which sets out that septic systems “be located as far back from the shoreline as is reasonable and possible and shall be located a minimum of 30 m from the high-water mark.” He opined that the SPB conforms with this provision of the COP. Mr. Jardine noted that the policy does provide for a reduction of the setback where it is not physically possible to comply with the 30 m setback and proffered that an Application for Minor Variance or Rezoning, accompanied by the appropriate supporting reports and documentation, could be requested to reduce the setback on a site-specific basis.

[34] Section 5.4.5 of the COP contains the Waterfront Policies. Mr. Jardine referred to Section 5.4.5.3 of the COP where it outlines planning principles to guide future development in the Rural and Waterfront designation areas. He opined that it emphasizes the need to restrict future development for shoreline properties, maintain a buffer area composed of natural vegetation, and maintain the property in its natural state.

[35] Mr. Jardine opined that the SPB conforms with Section 5.4.5.9 of the COP which makes provisions for the use of the shoreline area for structures such as boathouses and boat docks and activities including swimming. He proffered that the SPB allows for limited shoreline use and the amount is dependent on shoreline frontage. The SPB makes specific provisions for residential uses and non-residential uses, including marina uses, which is in keeping with the intent of the COP. The SPB makes specific allowances concerning Tent and Trailer Park uses as provided for in Section 5.6.4.2 c) and e) of the COP.

[36] Mr. Jardine acknowledged that the SPB includes specific standards of 30 m for the setback and the vegetative buffer. Where the COP makes provisions for the reduction of the setback or the buffer width, the COP specifically identifies that an Application for Minor Variance or an Application for a Zoning By-law Amendment can be submitted to the local Municipality to seek a reduction from the 30 m performance standard. He proffered that such an application will be required to be supported by an appropriate study or support.

[37] Mr. Ashbourne does not share the opinions of Mr. Jardine and opined that the SPB is not consistent with the general intent and purpose of the COP. Specifically, he opined that the COP is a long-term plan that provides guidance and is not to be applied “prescriptively” as is the case with the SPB. He proffered that the COP is much more permissive. The Municipality needs to create a zoning by-law that does not unreasonably restrict land use and development in proximity to water bodies and watercourses and that will not ultimately frustrate landowners in the use or development of their land.

[38] Regarding the vegetative buffer, Mr. Ashbourne reviewed Sections 5.4.5.3, 5.4.5.7, and 5.4.5.8 of the COP and proffered that the COP is much more permissive than the SPB reflects. Specifically, he referred to the following phrases: “as is practical”, “wherever feasible”, “should be”, “wherever possible”, and “shall be discouraged”. Mr. Ashbourne submitted that the COP recognizes properties are unique and that creating a zoning by-law that is overly prescriptive and cumbersome will cause confusion and frustration for landowners.

[39] Mr. Ashbourne acknowledged that the 30 m buffer in the SPB does conform with the strict reading of the COP, however, he submitted that the SPB does not need to be as restrictive as it is where it prohibits a landowner from altering or removing the natural vegetation on their property within 30m of the high-water mark. Mr. Ashbourne further acknowledged that zoning, by its nature, restricts a property owner's use of their

property. He also indicated that the current zoning by-law has a 15 m buffer with no provision for water access whereas the SPB allows access.

Matters of Provincial Interest (s. 2 of the Act)

[40] Mr. Ralph proffered that the vegetative buffer required in the SPB does not have regard to the matters of provincial interest set out in s. 2 of the Act that addresses the orderly development of safe and healthy communities and the protection of public health and safety. Specifically, Mr. Ralph directed the Tribunal to documents and discussions that he has had with the Municipality's Fire Department and advised that the vegetative buffer requirement and the restrictions to remove vegetation contradict the fire prevention guidelines of the Municipality with respect to the protection of property from wildfires. Further, he submitted that the vegetative buffer creates an environment supportive of the spread of ticks and the potential health impacts resulting from tick bites.

[41] In consideration of ecological systems features and functions as referred to in s. 2 (a) of the Act, Mr. Ralph opined that a water quality study should have been completed by the Municipality to support the creation of the buffer zone and the prescriptive width of 30 m.

[42] Mr. Jardine proffered that a landowner proposing a new development has the option of building beyond the 30 m vegetative buffer if fire safety is a concern. He submitted that existing property owners who have concerns with respect to fire safety may refer to Section 4.4.3.2 of the COP which addresses hazardous forest types for wildland forests and provides a process and context for a site evaluation and assessment. He also referred to Section 4.4.3.6 of the COP which states: "Development may be permitted in lands with hazardous forest types for wildland fire where the risk is mitigated in accordance with wildland fire assessment and mitigation standards."

[43] Regarding the health and safety issues related to creating a hospitable environment for ticks and the subsequent risks associated with them due to the requirement for a vegetative buffer, Mr. Castro referred to the *Ontario Regional Perspective Report (2022)* which indicates that the presence of ticks has increased significantly in recent years and that the factors supporting this are varied with one significant factor being warming temperatures due to climate change.

[44] Regarding the balance between public interest and the interests of private landowners, Mr. Jardine opined that SPB protects the environment by preventing erosion hazards and protecting water quality while providing an orderly means for development to co-exist. Mr. Jardine referred to the provision within the SPB that permits the clearing of 25% of the shoreline frontage, up to a maximum of 23 m, to allow property owners to access the shoreline, erect a boathouse or a dock, use the waterfront, and enjoy the views of the water. Mr. Jardine opined that, through sustainable development, both public and private interests are supported, and he specifically referred to the SOSR, which he proffered was informed by the NHRM and the LCAH, as supporting this position.

[45] Mr. Ralph stated that the SPB is overly restrictive and prescriptive in that it significantly impacts his rights as a property owner to maintain and use his land as he desires. He suggested that his property value would be significantly reduced given the increased setback and restrictions imposed within the vegetative buffer zone. Mr. Ralph likened the SPB to a “retroactive restrictive covenant” being placed on his property. He proffered that the Municipality has taken away the use and enjoyment of his property within the 30m buffer placed around the lake and submitted that the buffer is “expropriation without compensation” in his opinion.

[46] The Planners both addressed Legal Non-Conforming (“LNC”) status and agreed that legally existing development that exists on the date of passing of the SPB, and which does not comply with the provisions of the SPB, will have LNC status.

[47] Mr. Jardine proffered that property owners who currently experience LNC status will be permitted to continue to use their property as they did prior to the passing of the SPB. In the event that a property owner proposes an alteration or change in use to their properties, they should contact the Municipality to confirm their LNC status and whether the proposed alteration or change will require an approval such as a minor variance.

[48] Mr. Ashbourne opined that the SPB does not represent good planning as it will frustrate property owners who may not know or understand their LNC status. In particular, the definition and restrictions that apply to the vegetative buffer will leave property owners with uncertainty as to what they are permitted to do in the simple context of maintaining their property.

[49] Mr. Jardine, in consideration of the testimonies of Dr. Mackereth, Mr. Castro, and Mr. Ralph, advised that it is not the intention of the Municipality to prevent the appropriate maintenance of properties which could include the removal of invasive species or the removal of diseased or dangerous trees. He proffered that minor property maintenance within the vegetative buffer zone should be permitted.

[50] Mr. Jardine recommended an amendment to the SPB for the Tribunal's consideration in response to the concerns raised by the Appellant. The amendment included a definition of a vegetative buffer which makes provisions for maintenance, including pruning of vegetation and removal of diseased or dangerous trees.

[51] The Tribunal, in reviewing the suggested amendment from the Municipality, recommended that the definition of the vegetative buffer be revised to separate the definition from the provision for pruning and maintenance which would be added to Section 5.9.3 iii) of the SPB as subsection e). The definition would read:

3.258.1 "vegetative buffer" shall mean a natural area, adjacent to a shoreline, maintained or re-established to its natural vegetated state.

The pruning and maintenance provision would read:

e) for pruning necessary to maintain the health of vegetation and trees, the removal of diseased or dangerous trees, and the removal of noxious weeds or invasive plants that have been identified and deemed as such by the Province of Ontario.

[52] Mr. Jardine concurred with the recommended revision.

[53] In conclusion, Mr. Jardine opined that the SPB, with the proposed amendment, is consistent with the PPS, conforms with the policies of the COP and in particular with those policies identified in the Issue List, and has appropriate regard for the matters of provincial interest as set out in s. 2 of the Act. The SPB, as amended, represents an appropriate balance between the public interest and the interests of private landowners and is good planning.

[54] Mr. Ashbourne concluded that the SPB unreasonably restricts land use and development next to waterbodies and watercourses by broadly prohibiting site alteration, development, and the removal of vegetation within 30 m of the high-water mark. He opined that the COP includes a broad set of goals, objectives, and policies that are in turn to be interpreted, administered, and enforced by the lower-tier municipality through its zoning by-laws. Mr. Ashbourne continued that the COP is not meant, nor required, to be applied prescriptively as is the effect of the SPB. Mr. Ashbourne concluded that the SPB does not appropriately balance private landowners' interests and does not represent good planning.

ANALYSIS AND FINDINGS

[55] The Tribunal, having considered the testimony of the witnesses, their witness statements, and the documents filed in support of their respective testimonies, makes the following findings.

[56] The Tribunal heard evidence from both planners, Mr. Ashbourne and Mr. Jardine, and from Dr. Mackereth and Mr. Castro, all of whom concluded that the SPB is consistent with the PPS. The Tribunal accepts these submissions and finds that the

SPB will protect, improve, or restore the quality and quantity of water by implementing necessary restrictions on development and site alteration. The SPB will also result in stormwater management practices that minimize stormwater volumes and contaminant loads and maintain and increase the extent of vegetative and pervious surfaces adjacent to shorelines.

[57] Dr. Mackereth and Mr. Castro both agreed that there was no “one size fits all” for vegetative buffer widths and testified that a 30 m buffer has been demonstrated to provide the best results in most circumstances to protect bodies of water and watercourses. The Tribunal reviewed the NHRM and the LCAH publications issued by the Province of Ontario to assist in the implementation and interpretation of the PPS and finds that these publications both support the use of a 30 m vegetative buffer and also the requirement of a 30 m setback as a means of implementing the policy direction provided in the PPS.

[58] The Tribunal finds that the SPB conforms with the general intent, objectives, and goals of the COP. The Tribunal prefers the evidence provided by Mr. Jardine on this issue and the Tribunal finds that the COP requires a 30 m setback for structures and septic systems, including the leaching bed and mantle, and that a vegetative buffer of 30 m shall be provided adjacent to water bodies and watercourses. The SPB implements this policy direction.

[59] The COP policies addressing fish habitat, erosion hazards, environmental protection issues and servicing all identify the requirement for a vegetative buffer and a setback to water bodies and watercourses. These policies also address scenarios where compliance with the 30 m requirement may not be possible or feasible. The COP specifically identifies that a minor variance or zoning amendment may be considered in such situations.

[60] The Waterfront Policies set out in section 5.4.5.3 of the COP identify planning principles to guide future development in the Waterfront designation which include:

- 5.4.5.3 c) The natural landscape should prevail with built form blending into the landscape.
- 5.4.5.3 e) Natural shorelines and vegetative buffers will be retained, maintained and/or restored.
- 5.4.5.3 f) Native species should be used for buffers and where vegetation is being restored.
- 5.4.5.3 g) Measures such as changes to proposed lot lines and increased setbacks should be utilized to help address potential negative impacts on natural heritage features and the environment.
- 5.4.5.3 j) Building envelopes, including the careful siting of shoreline structures, and the associated activity area should be defined and located in the most appropriate locations on the property, leaving the remainder of the property generally in its natural state.

[61] The Tribunal finds that these policies are clear in their direction of protecting the shoreline, maintaining a vegetative buffer, and the introduction of buildings and use of the shoreline that minimizes negative impacts on natural heritage features and the environment.

[62] Policy 5.4.5.5 of the COP states:

In Waterfront areas, residential dwellings, other main buildings, structures, fences, earth berms and uses shall be set back as far from a shoreline or locally significant wetland as is practical, taking into consideration the size, shape and topography of the lot in question. Wherever feasible, the setback should be a minimum of 30 metres from the seasonal high water mark. Residential infill structures may be set back from the seasonal high water mark in accordance with the established building line.

[63] The Tribunal reads this policy to direct development and site alteration to be located as far from the shoreline “as is practical”. Further, the policy states that “wherever feasible” the setback shall be a minimum of 30 m. The Tribunal finds that this policy is not flexible in the manner that the Appellant’s planner proffers and, when read together with policies outlined in Policy 5.4.5.3, the Tribunal finds the intent is that 30 m should be the minimum and only in specific circumstances should the setback be less than 30 m. The COP anticipates such situations and provides for relief through a minor

variance or zoning amendment with proper consideration of the specifics that might warrant a lesser setback.

[64] Policy 5.4.5.7 of the COP is similar in its structure to Policy 5.4.5.5 however it addresses that the vegetative buffer with a minimum width of 30 m is to remain undisturbed and vegetated wherever feasible in contrast to a 30 m setback in Policy 5.4.5.5. The policy also addresses impacts of road location and possible reduction of the buffer through the minor variance process and residential infill.

[65] Policy 5.4.5.8 of the COP also addresses the vegetated buffer requirement and expands on the purpose of the vegetated buffer to filter pollutants from run-off and discourage the clear-cutting of trees. The policy also provides for consideration of a reduction of the buffer on lots of record where the 30 m setback can not be achieved.

[66] The Tribunal finds that these policies are clear in that they require a development setback of at least 30 m and require a vegetative buffer having a minimum width of 30 m from the high-water mark of lakes and watercourses. The Policies have acknowledged that it may not be possible to comply with the requirements in all situations and have appropriately contemplated that relief may be requested at the local level through an Application for Minor Variance. The Tribunal finds this a reasonable and responsible approach and the SPB appropriately reflects the policy direction provided in the COP.

[67] The Tribunal reviewed s. 34 (1) of the Act wherein the Act provides municipal councils with the authority to pass a zoning by-law for differing purposes including the prohibiting the use of land. The Tribunal specifically references s. 34(1) 3.2 ii of the Act which states:

Zoning by-laws may be passed by the council of local municipalities ... for **prohibiting** [emphasis added] any use of land and the erecting, locating or using of any class or classes of buildings or structures within any defined area or areas that is a significant corridor or shoreline of a lake, river or stream.

[68] The Tribunal finds this authority particularly relevant as this issue appears to be at the root of the Appeal of the Appellant. The Municipality has the authority to prohibit the use of land and the objective of such restrictions is to implement the environmental protection policies in the COP that are intended to protect and preserve lakes, rivers, and streams as specifically referenced in the section of the Act stated above. The SPB has made exceptions, as provided for in the Act, to allow shoreline access and uses along the shoreline.

[69] Zoning by-laws are prescriptive by their very nature. A zoning by-law regulates land use and is either applied generally across the municipality or specifically on a site-specific basis. A zoning by-law will often not capture every scenario as it may be too general or too specific. The Act contemplates such a conflict and makes provisions for relief from the zoning by-law, either by way of filing an amendment to the zoning by-law or, as is more commonly applied, filing an Application for Minor Variance. This scenario plays out in municipalities across Ontario with regular frequency.

[70] The Appellant's planner proffered that the SPB does not represent good planning as it is too prescriptive as it broadly prohibits site alteration, development, or the removal of vegetation. The Tribunal finds that this interpretation may be relevant on a site-specific basis, however when considering the broader applicability of the SPB, the Tribunal prefers the evidence proffered by the planner of the Municipality.

[71] Policy 5.4.5.9 of the COP provides for shoreline activity including boathouses, docks, and swimming areas. The policy establishes targets as a percentage of shoreline frontage for residential uses, tourist commercial uses, and marinas. Policy 5.6.4.2 addresses tent and trailer park uses including shoreline use provisions. These policies have been implemented through the standards and provisions within the SPB.

[72] In consideration of the testimonies of Dr. Mackereth and Mr. Castro, the Tribunal finds that the balance between environmental considerations and property owners' use

of the shoreline and access through the vegetative buffer area has been appropriately addressed.

[73] The Tribunal finds that the SPB conforms to the COP and implements the direction provided in the relevant policies contained therein.

[74] The Tribunal finds that the SPB has appropriate regard for matters of provincial interest as set out in s. 2 of the Act. The Tribunal accepts the uncontested evidence of Dr. Mackereth and Mr. Castro that the SPB will provide an appropriate level of protection of ecological systems, features, and functions. The SPB will result in the orderly development of safe and healthy communities and the protection of public health and safety through the setback requirements for erosion hazards adjacent to waterbodies and watercourses. With respect to the issues raised in relation to wildfires and ticks, the Tribunal was not presented with any compelling evidence that the SPB would impact these matters.

[75] The Tribunal, in consideration of the issue of the resolution of planning conflicts involving public and private interests, finds that the SPB has balanced the environmental considerations of protecting and preserving the water quality and ecosystems within the Municipality's lakes, rivers, and streams with the private interests of landowners accessing these same water bodies for personal use. The SPB allows for views and access through the buffer area and also for the use of the shoreline for recreation purposes and the erection of structures. The amendment put forth by the Municipality will permit the appropriate maintenance and care of the vegetative buffer on private properties.

[76] The issue of LNC status is addressed in s. 34 (9) of the Act and the Tribunal finds that the SPB will not prevent the Appellant from the continued use of his property in the manner that he enjoyed before the passing of the SPB.

[77] The SPB provides property owners with direction for land use adjacent to water bodies and watercourses that also recognizes the importance of access and use of their lands and shorelines for such things as boat houses, docks, and waterfront activities such as swimming.

[78] In consideration of the above statutory requirements, the Tribunal is satisfied that the SPB, as amended, represents good planning and is in the public interest.

[79] The Tribunal allows the appeal in part and approves the by-law as amended to include the definition of the vegetative buffer and provide for the maintenance of the vegetative buffer as set out in paragraph 51 of this decision. In all other respects, the appeal is dismissed.

ORDER

[80] **THE TRIBUNAL ORDERS THAT** the appeal against By-law No. 2022-005 of the Municipality of Hastings Highlands is allowed in part and By-law No. 2022-005 is amended as follows:

1. That Section 1 is amended to add subsection c) as follows:
 - c) That Section 3, as amended, is hereby further amended by adding Section 3.258.1 for the definition of “vegetative buffer” as follows:

“vegetative buffer” shall mean a natural area, adjacent to a shoreline, maintained or re-established to its natural vegetated state.

2. That Section 2 b) is amended to add subsection 5.9.3 iii) e) as follows:

- e) for pruning necessary to maintain the health of vegetation and trees, the removal of diseased or dangerous trees, and removal of noxious weeds or invasive plants which have been identified and deemed as such by the Province of Ontario.

[81] **AND THAT** in all other respects, the Tribunal Orders the appeal dismissed.

“David Brown”

DAVID BROWN
MEMBER

“Gregory J. Ingram”

GREGORY J. INGRAM
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.