

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: March 20, 2025

CASE NO(S).:

OLT-24-000196

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

Applicant and Appellant:

Subject:

Description:

Reference Number:

Property Address:

Municipality:

OLT Case No.:

OLT Lead Case No.:

OLT Case Name:

Blue Birch Properties Inc.

Application to amend the Zoning By-law –
Refusal or neglect to make a decision

To permit the rezoning of subject lands to
redefine the existing wetland and hazard zones
and to establish two (2) development envelopes.
P3386

Part Lot 25, Concession 4

The Blue Mountains

OLT-24-000196

OLT-24-000196

Blue Birch Properties Inc v. The Blue Mountains
(Town)

Heard:

March 17, 2025 by Video Hearing

APPEARANCES:

Parties

Blue Birch Properties Inc.
("Appellant")

Town of The Blue Mountains
("Town")

Grey Sauble Conservation Authority
("GSCA")

Counsel

Jason Park
Sarah Kagan

Narmada Gunawardana
Denise Baker (in absentia)

Alex Ciccone

Niagara Escarpment Commission
("NEC")

Demetrius Kappos
Margaret McCloskey

**MEMORANDUM OF ORAL DECISION DELIVERED BY T.F. NG ON MARCH 17, 2025
AND ORDER OF THE TRIBUNAL**

[Link to Order](#)

INTRODUCTION

[1] The matter before the Tribunal was a hearing to consider a settlement proposal ("Proposal") of the Appellant's appeal of a Zoning By-law Amendment ("ZBA") (the "Application").

[2] The purpose of the Application was to facilitate a development by rezoning lands municipally known as Part Lot 25, Concession 4 ("Subject Land" / "Site"), redefining the existing wetland and hazard zones and to establish two development envelopes on the Subject Land, in the Town of The Blue Mountains ("Town").

[3] Following the Proposal a draft ZBA was provided.

[4] Kristine Loft, a registered Professional Planner, swore an Affidavit on March 10, 2025, on behalf of the Appellant, in support of the Proposal. She was qualified to give expert opinion evidence in land use planning matters. The Affidavit was marked as **Exhibit 1**.

[5] The Tribunal, having reviewed the Proposal, the documents, and the affirmed testimony of Ms. Loft, allows the appeal for the reasons set out below.

PLANNING EVIDENCE

[6] Ms. Loft gave an overview of the Application and the legislative and policy framework in support of the Proposal. She addressed the concerns of the Participants, relating to: inconsistency in the findings of the Environmental Impact Assessment, Flood Hazard Study, and Planning Justification Report; clarification of the changes that allow for the development of defined wetlands and hazard lands; support for the responsible development of the Subject Land, emphasizing the need for the Town to resolve drainage issues in a comprehensive manner; support for responsible development of the Subject Land, emphasizing the need for the Town to resolve flooding, drainage, and stormwater management issues in a comprehensive manner and to return the entrance lands to the owner; and concern regarding the potential harm to endangered tree and wildlife species, as well as the irreversible damage to existing woodlands and wildlife habitats.

[7] She informed the Tribunal that the Appellant's consultant engineers and experts have conveyed that there were no adverse impacts. The Environmental Impact Assessment, Flood Hazard Study and Planning Justification Report have been reviewed, and confirmation of site constraints has been carefully addressed. The proposed development, including the delineation of developable limits, has been thoroughly examined and is supported by the technical studies including Earth Works Analysis, Environmental Impact Study, Flood Hazard Study, Functional Servicing Brief and Geotechnical Investigation. The proposed development provides the required infrastructure to address drainage, stormwater management, and functional servicing needs for the proposed building envelope at the northwest quadrant of the Subject Lands. Additional comprehensive planning regarding municipal drainage issues can be explored by the Town and other agencies. The management of existing natural features, endangered wildlife species, and hazard lands has been examined and carefully reviewed.

[8] The relevant policy framework includes the Provincial Planning Statement, 2024 ("PPS"), the Niagara Escarpment Plan (NEP"), the County of Grey Official Plan

(“COP”), and the Town’s Official Plan (“OP”). Ms. Loft opined that the Proposal and ZBA represent good land use planning, and she recommended approval of the ZBA.

AREA CONTEXT

[9] The Subject Land is an irregularly shaped lot near the Georgian Bay shoreline in the Town of The Blue Mountains. The Site is in Camperdown, south of Highway 26 West and generally between Barclay Boulevard to the west, Hidden Lake Road to the east, and James Street and Hidden Lake Road to the south. The Subject Land abuts the Georgian Trail at the northern boundary.

[10] The Subject Land is in a residential area surrounded by existing residences that have frontages on Barclay Boulevard and James Street. The Site is adjacent to a medium density condominium development (Hidden Lakes Development) to the east.

[11] The Subject Land is vacant and has a lot area of 10.6 hectares(“ha”). A significant portion of the Site comprises a wetland feature and associated hazard lands. A watercourse, known as Watercourse 22, traverses the property from the southwest to the northeast. The Subject Land has frontage onto James Street in the southeast quadrant. The Site abuts a parcel of municipally owned lands between the Subject Land and Barclay Boulevard.

[12] Under the OP, the Subject Land is currently designated ‘Residential Recreational’ and ‘Hazard’ in Schedule A-3.

[13] The Subject Land is currently zoned ‘Development (D)’, ‘Hazard (H)’, and ‘Wetland (W)’ in the Town Zoning By-law 2018-65 (“ZBL”) as amended. The Site also includes a h1 Holding Symbol that is a holding provision related to “Lands Adjacent to Wetland Zone”.

THE REVISED PROPOSAL

[14] As part of the Proposal, a revised plan has been prepared, now showing a summary of changes made to the plan because of the expert discussions:

1. The area proposed to be disturbed by the development was significantly reduced from 1.52 ha to 0.64 ha. The settlement plan yields a final development envelope/area of 0.46 ha (versus 0.73 ha previously proposed) and will require regrading and replanting of approximately 0.18 ha for floodplain volume offsetting (versus 0.79 ha previously proposed).
2. The original proposal reflected in the Application sought a development envelope having an area of approximately 0.72 ha at the southeast quadrant of the property abutting James Street. This building envelope has been removed from the settlement plan.
3. The impact to identified natural heritage features and functions has also changed: Less Significant Woodland, Significant Wildlife Habitat, and candidate Species at Risk Habitat (for Endangered Bats) is proposed for permanent alteration.
4. Permanent site alteration is entirely removed from the wetland habitat and a minimum 15 metre setback to the feature is provided.
5. MECP has reviewed the proposal and confirmed that contravention of the Endangered Species Act, 2007, is unlikely, provided that the proposed timing windows for tree removal are adhered to.

[15] In response to concerns with the southeast development envelope, the Proposal was revised to remove the southeast development envelope.

ANALYSIS AND FINDINGS

[16] The Tribunal accepts the uncontested opinion evidence of Ms. Loft. The Tribunal finds that the Proposal has proper regard for the matters of provincial interest as set out in s. 2 of the *Planning Act* ("Act"). In particular, s. 2(a) the protection of ecological systems, including natural areas, features and functions; and 2(p) the appropriate location of growth and development.

[17] Further, the proposed development is consistent with the PPS, issued under s. 3 of the Act. The PPS is a streamlined province-wide land use planning policy framework that replaces both the Provincial Policy Statement, 2020 and the A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019.

[18] Ms. Loft opined, and the Tribunal agrees, that the Proposal is consistent with the policies within the PPS and conforms to the NEP, COP and the OP.

Provincial Planning Statement, 2024

[19] The Proposal is consistent with the policies of the PPS, particularly sections 2.3.1.1 and 2.3.1.2a) which promote growth and development in Settlement Areas and the efficient use of land and resources.

[20] The Proposal is consistent with s. 4.1.8, which states that development and site alteration shall not be permitted on lands adjacent to identified natural heritage features unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts.

[21] Section 4.2.2 provides that development and site alteration shall be restricted in or near sensitive surface water features and sensitive groundwater features such that these features and their related hydrologic functions will be protected, improved or

restored, which may require mitigative measures and/or alternative development approaches.

[22] The management of the existing natural features and hazard areas on the Subject Land has been appropriately mitigated as described in the technical reports which included the Flood Hazard Study (Tatham, 2023), Environmental Impact Study (Birks Natural Heritage Consultants, 2023), and Functional Servicing Report (Tatham Engineering, 2023).

[23] The Tribunal finds that the Proposal and ZBA are consistent with the PPS 2024.

The Niagara Escarpment Plan

[24] The Subject Land is designated 'Escarpment Recreation Area' in the NEP. Single detached dwellings are permitted within the Escarpment Recreation Area.

[25] Section 1.8.5 provides Development Objectives within the Escarpment Recreation Area. The policy requires that growth and development shall be compatible with and provide for the protection of natural heritage features and functions and the protection of hydrologic features and functions.

[26] Section 2.7.3 provides for diversity and connectivity between key natural heritage features and key hydrologic features to be maintained and where possible enhanced for the movement of native plants and animals. Subsection 2.7.8 provides that development within the habitat of endangered species and threatened species within the Escarpment Recreation Area is not permitted unless it is in compliance with the Endangered Species Act, 2007.

[27] The proposal has taken into consideration the natural heritage features and the hydrologic features and functions, as well as the protection of natural habitats of species at risk. The Tribunal finds the Proposal and ZBA conform to the NEP.

County of Grey Official Plan

[28] The Subject Land is designated as “Recreational Resort Settlement Area” on Schedule A – Map 2 Land Use Types in the COP.

[29] The Subject Land is identified as containing Significant Woodlands and Other Wetlands and is near to two “Abandoned Petroleum Wells” and one “Unknown Petroleum Well” on Appendix B of the COP- section 5.8.1(1). A Geotechnical Report was prepared which confirmed the existing soils can support residential uses and are also suitable for on-site sewage disposal.

[30] The Flood Hazard Study (Tatham, 2023), Environmental Impact Study (Birks Natural Heritage Consultants, 2023), and Functional Servicing Report (Tatham Engineering, 2023) confirm that implementation of appropriate mitigation measures, including site regrading, minimum setback distances, and established developable limits appropriately respond to policies related to Natural Heritage Features (Section 7.3.2 – Other Wetlands; Section 7.4 – Significant Woodlands) in the COP.

[31] The Tribunal finds that the Proposal and the ZBA conform to the COP.

Town’s Official Plan

[32] The Subject Land is designated ‘Residential Recreational Area’ and ‘Hazard’ in Schedule A-3 of the OP.

[33] Section B3.7 provides for Residential/Recreational Area policies. Section B3.7.3 provides the permitted uses which includes single-detached dwellings, among other uses listed.

[34] The Subject Land is currently vacant and surrounded by existing residential uses that comprise a mix of seasonal and permanent dwellings. The Site is near recreational areas including Northwinds Beach, Craigleith Provincial Park and to the Village at Blue. Existing natural feature constraints limit opportunities for new development on the Subject Land. The Proposal offers an opportunity for a building envelope to be established near resort and recreational amenities on an existing lot of record.

[35] Section B5.1.1 provides policy objectives related to natural heritage features and areas. The objectives include the maintenance and enhancement of the ecological integrity of natural heritage features, elimination of the potential for loss of significant wetlands, and the provision of tools to properly assess development applications near environmentally sensitive features and areas.

[36] Section B5.2 provides policies related to Natural Heritage Features. Section 5.2.1 provides that development and site alteration is not permitted in Significant Wetlands and Woodlands unless it has been demonstrated that there will not be any adverse impacts to the natural features or their functions.

[37] With respect to the requirements of Section B5.2 the following studies were provided; a Flood Hazard Study (Tatham Engineering), Environmental Impact Study (Birks Natural Heritage Consultants), Soil Report (Soil Engineers) and Functional Servicing Report (Tatham Engineering). These reports conclude that implementation of appropriate mitigation measures, including site re-grading, minimum setback distances, and established developable limits, appropriately respond to policies related to Natural Heritage Features.

[38] Section B5.4 provides policies related to Hazard Lands. Section B5.4.2 provides limitations on permitted uses being forestry, uses connected with conservation, agriculture, passive public parks, public utilities and resource based recreational uses.

[39] The proposed ZBA includes a Site-Specific exception which relates to an area of Hazard zoned lands whereby “Additional permitted uses include limited site works including tree clearing, site grading and restoration, in accordance with any permit issued by the Conservation Authority”.

[40] The Tribunal finds that the Proposal and the ZBA conform to the OP.

ZONING BY-LAW

[41] The Subject Land is zoned ‘Development (D)’, ‘Hazard (H)’, and ‘Wetland (W)’ in the Town Zoning By-law 2018-65 (“ZBL”), as amended. The Site also has a Holding symbol (h1) on the property. The h1 symbol is related to the “Lands adjacent to Wetland Zone”.

[42] The purpose and effect of the Proposed Zoning By-law Amendment is to rezone the lands from Development (D), Hazard (H) and Wetland (W) Zones to a Residential One- One–Site-Specific Exception (R1-1-X-HXX), Hazard (H-hXX), Hazard Site-Specific Exception (H-XX-hXX) and Wetland (W-hXX) Zones to allow for a proposed building envelope and the potential for three (3) residential lots by way of a future consent process in the northwest quadrant of the site. The By-law will also lift Holding symbol (h1).

[43] The holding '-h' symbol shall not be removed from the portion of the lands zoned Hazard (H) and Wetland (W), prior to any site alteration or disturbance, until future proposed works shall be reviewed by a person knowledgeable in Species at Risk, and their habitats, in order to ensure that the proposed works are in keeping with the Endangered Species Act, 2007 as current at such time that site alteration is

contemplated. Further regulations on holding provisions and removal are stipulated in the draft ZBA.

[44] The Tribunal finds that the ZBA complies with the general provisions of the ZBL and represents good planning.

[45] The Tribunal finds that:

- a) The Subject Land is in an area identified for residential and recreational development which permits the proposed development.
- b) The Proposal contains mitigation measures for existing hazard lands and have protection of the natural heritage features and functions on the Subject Land.
- c) The Proposal provides for appropriate conservation of the hydrological features and functions. The natural habitats of species at risk are conserved and protected with the Proposal.
- d) The Subject Land within the Recreation Resort Settlement Area of the COP and the Residential Recreation Area of the OP permit the Proposal contemplated.

CONCLUSION

[46] The Tribunal is satisfied that the Proposal and the ZBA represent good planning, have regard for the matters of provincial interest as set out in s. 2 of the Act, are consistent with the PPS, and conform to the NEP, COP, and the OP.

[47] The Tribunal grants the appeal in part and approves the ZBA.

ORDER

[48] **THE TRIBUNAL ORDERS THAT** the appeal is allowed in part, and that:

1. The Town of The Blue Mountains By-law No. 2018-65 (as amended) is hereby amended, as set out in **Attachment 1** to this Order. The Tribunal authorizes the municipal clerk to assign a number to this By-law for record keeping purposes.

“T.F. Ng”

T.F. NG
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

WITHOUT PREJUDICE- November 7 2024 (REV February 27 2025 – Blue Birch)

Schedule 1

Zoning By-law Amendment

The Corporation of the Town of The Blue Mountains

By-law Number 2025-_____

Whereas the Ontario Land Tribunal in its decision issued on ~, 20~ in Tribunal Case OLT-24-000196, in hearing an appeal under Section 34(11) of the *Planning Act*, R.S.O. 1990, c P.13, as amended ordered the amendment of the Town of The Blue Mountains Zoning By-law By-law No. 2018-65, as amended with respect to the lands in the Town of The Blue Mountains legally described as PT LT 25 CON 4 COLLINGWOOD PT 1 16R1936; S/T CO17986;

NOW THEREFORE THE ONTARIO LAND TRIBUNAL APPROVES AS FOLLOWS:

- Schedule A - Map No. 13 of the Town of The Blue Mountains Zoning By-law No. 2018-65 is hereby amended, by amending the zoning on the subject lands described as PT LT 25 CON 4 COLLINGWOOD PT 1 16R1936; S/T CO17986; THE BLUE MOUNTAINS shown on Schedule "A", affixed here to from DEVELOPMENT (D-h1) ZONE, HAZARD (H) ZONE and WETLAND (W) ZONES to the RESIDENTIAL ONE - ONE – SITE SPECIFIC EXCEPTION (R1-1-X-hXX) ZONE, HAZARD (H-hXX), HAZARD - SITE SPECIFIC EXCEPTION (H-XX-hXX) and WETLAND (W-hXX) ZONES.
- That Table 9.1 – Exceptions is amended by adding the following new exceptions to Table 9.1:

Exception Number	Zone	Special Provisions
X	R1-1-X	<ul style="list-style-type: none"> Reduced lot frontage of 10 metres.
XX	H-XX	<ul style="list-style-type: none"> Additional permitted uses include: Limited site works including tree clearing, site grading and restoration, in accordance with any permit issued by the Conservation Authority.

- That Section 10.3 Site-Specific Holding Provisions is amended by adding the following new exception to Table 10.1:

Holding Number	Zone	Conditions of Removal
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WITHOUT PREJUDICE- November 7 2024 (REV February 27 2025 – Blue Birch)

XX	R1-1- X-hXX H-XX- hXX H- hXX W- hXX	<ul style="list-style-type: none"> • The holding 'h' symbol shall not be removed from any part of the lands until council authorizes, and the Landowner enters into, an Agreement with the Town of the Blue Mountains for the provision of access from Railway Street to the lands. • The holding 'h' symbol shall not be removed from the portion of the lands zoned Residential (R1-1-X), and Hazard (H-XX), until a Vegetation Protection Plan (VPP) is prepared to the satisfaction of the Niagara Escarpment Commission. The VPP shall identify a minimum vegetation protection zone and mitigation measures, including species at risk mitigations, timing windows and site inspection for nesting birds prior to tree removals. • For lands zoned R1-1-X and H-XX, the holding 'h' symbol may be removed provided: i. All site alteration and disturbances are completed within twelve (12) months from the date this by-law comes into force and effect; OR ii. All site alteration and disturbances commencing after twelve (12) months from the date this by-law comes into force and effect shall be reviewed by a person knowledgeable in Species at Risk, and their habitats, in order to ensure that the proposed works are in keeping with the Endangered Species Act, 2007 as current at such time site alteration is contemplated." • The holding 'h' symbol shall not be removed from the portion of the lands zoned Hazard Exception (H-XX)-hXX) and Residential One Exception (R1-1-X-hXX) until a permit has been obtained from the Grey Sauble Conservation Authority (GSCA) for site alteration within these areas (cut and fill). • The holding 'h' symbol shall not be removed from the portion of the lands zoned Hazard (H) and Wetland (W), prior to any site alteration or disturbance, future proposed works shall be reviewed by a person knowledgeable in Species at Risk, and their habitats, in order to ensure that the proposed works are in keeping with the Endangered Species Act, 2007 as current at such time that site alteration is contemplated.
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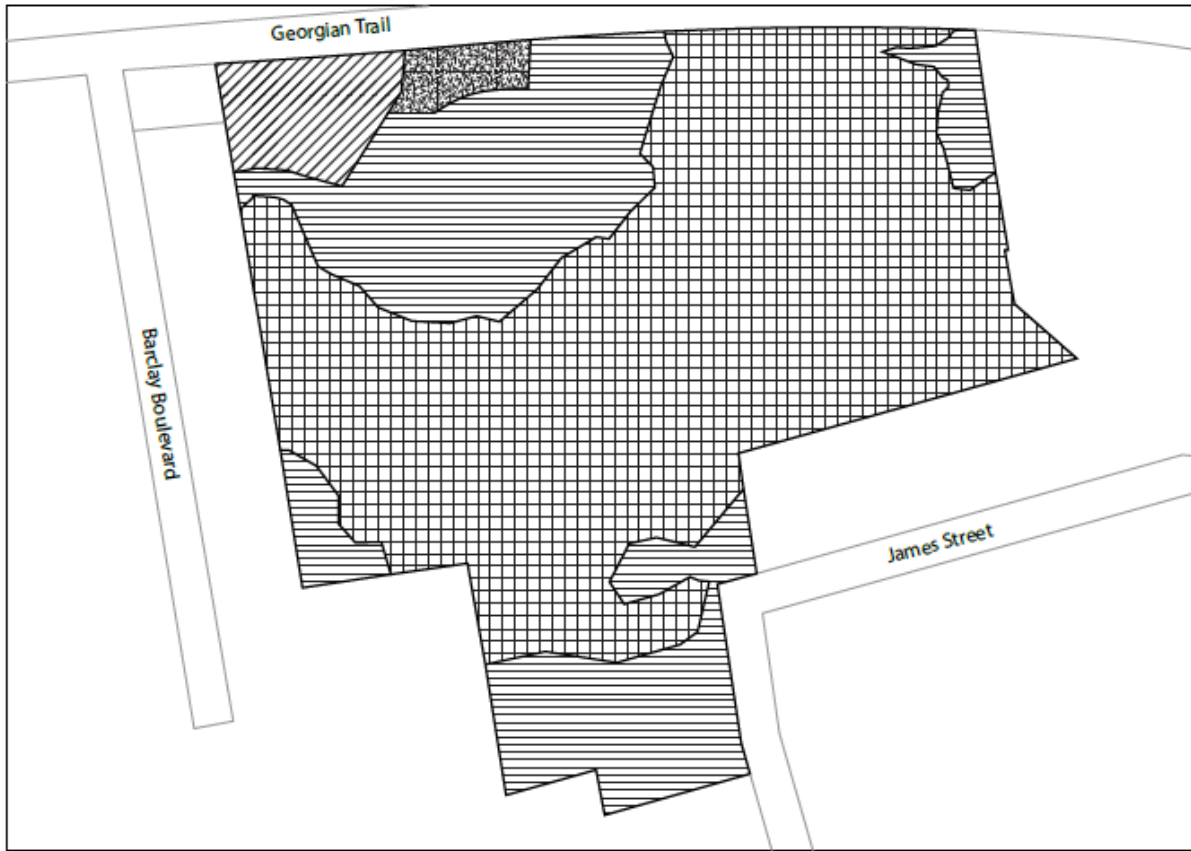
4. The Zoning By-law of the Blue Mountains being By-law 2018-65, is hereby amended by removing the Holding 'h-1' symbol from the lands lying and being in the Town of the Blue Mountains comprised of PT LT 25 CON 4 COLLINGWOOD PT 1 16R1936; S/T CO17986; THE BLUE MOUNTAINS.





WITHOUT PREJUDICE- November 7 2024 (REV February 27 2025 – Blue Birch)

5. That Schedule “A-1” are declared to form part of the By-law. And Further that this By-law shall come into force and take effect upon the enactment thereof.

Pursuant to the Decision of the Ontario Land Tribunal issued on ~, 20~ in Tribunal Case No. OLT-24-000196.

Schedule 'A-1'
By-law 2025-
Town of The Blue Mountains
Part Lot 25, Concession 4 (Collingwood)



-  Lands to be rezoned to the Residential One Exception (R1-1-X-hXX) Zone and Lift of Holding (h1)
-  Lands to be rezoned to the Hazard (H-hXX) Zone
-  Lands to be rezoned to the Hazard Exception (H-XX-hXX) Zone
-  Lands to be rezoned to the Wetland (W-hXX) Zone