Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: July 3, 2025 **CASE NO(S).:** OLT-24-001244

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

Appellant:	Queen's Court Development Ltd.
Subject:	By-law No. 2024-43
Description:	To facilitate the development of 88 residential condominium townhouses
Reference Number:	ZA 4/2022
Property Address:	221 Fox Street
Municipality/UT:	Penetanguishene/Simcoe
OLT Case No.:	OLT-24-001244
OLT Lead Case No.:	OLT-24-001244
OLT Case Name:	Queen's Court Developments Ltd. v Penetanguishene (Town)

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

Appellant:	2006316 Ontario Inc.
Appellant:	Queen's Court Development Ltd.
Subject:	Zoning By-law 2022-17
Description:	To permit a range of residential and open space uses on the Subject Property
Reference Number:	BL 2022-17
Property Address:	221 Fox Street (Town Wide)
Municipality/UT:	Penetanguishene/Simcoe
OLT Case No.:	OLT-22-004137
OLT Case Name:	Queen's Court Development Ltd. v. Penetanguishene (Town)

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Queen's Court Development Ltd.
Subject:	Proposed Official Plan Amendment
Description:	New Town of Penetanguishene Official Plan
Reference Number:	PT OP-1801
Property Address:	221 Fox Street (221 Fox Street)
Municipality/UT:	Penetanguishene

OLT Case No.:	OLT-21-001864
OLT Lead Case No.:	OLT-21-001864
OLT Case Name:	Queen's Court Development Ltd. v. Penetanguishene (Town)

Heard: June 24, 2025, by Video-Hearing

APPEARANCES:

Parties	**Counsel/Representative***
Queen's Court Developments Ltd.	Johanna Shapira Mithea Murugesu
Town of Penetanguishene	Alexandra Whyte
County of Simcoe	Zarah Walpole (*in absentia*) Alex Freeman-Carter (Student-at-Law) *Samantha Trottola

MEMORANDUM OF ORAL DECISION DELIVERED BY N. EISAZADEH ON JUNE 24, 2025, AND ORDER OF THE TRIBUNAL

Link to Order

INTRODUCTION

[1] This matter relates to a Zoning By-law Amendment Application ("Site Specific ZBA") filed by Queen's Court Developments Ltd. ("Appellant") seeking to implement an 88-unit townhouse condominium residential subdivision with an internal road network, associated open space, and stormwater infrastructure ("Proposed Development"), at the lands municipally known as 221 Fox Street ("Subject Property") in the Town of Penetanguishene ("Town"), in the County of Simcoe ("Country").

[2] This was the first Case Management Conference ("CMC") held in Tribunal Lead File No. 24-001244, which was convened with the related appeals bearing Tribunal File Nos. 21-001864 (an appeal of the Town's Official Plan approved by the County in 2019, or

"OPA") and 22-004137 (an appeal of the Town's Comprehensive Zoning By-law No. 2022-17 or "Comprehensive ZBL", scoped to be site specific to the Subject Property, the "Comprehensive ZBA"), and was converted to a Hearing to determine the merits of an Order sought to consolidate all appeals together, as well as the merits of a settlement reached in respect of the Proposed Development which would dispose of all three appeals.

AFFIDAVITS OF SERVICE

[3] The Parties advised there were no issues respecting service of the Notice of this CMC for either of the three matters. The Tribunal issued Notice respecting the present CMC in the matter bearing Case File No. 22-004137 (the Comprehensive ZBA). The following Affidavits of Service in respect of Notice of the present CMC as served by the Parties were marked exhibits:

i. Exhibit 1: Affidavit of Service of Notice of CMC sworn by Kelly Cole for the Town in relation to Case File No. 24-001244 (the Site Specific ZBA), dated May 22, 2025; and,

ii. Exhibit 2: Affidavit of Service of Notice of CMC affirmed by Samantha Trottola for the County in relation to Case File No. 21-001864 (the "OPA"), dated May 21, 2025.

PARTY AND PARTICIPANT STATUS REQUESTS

[4] The Tribunal did not receive any requests for Party or Participant status. The statutory Parties confirmed that they had also not received any Party or Participant status request, and further, that the only Parties to the related appeals bearing Case File Nos. 22-004137 and 21-001864 are the same Parties to the Lead Case File No. 24-001244, all in attendance at the present Hearing.

EXHIBITS AND EVIDENCE

[5] The Tribunal confirms that it has received, reviewed and considered the following materials, evidence and submissions:

i. The Motion Record of the Appellant inclusive of the uncontested Affidavit evidence of Celeste Philips affirmed June 13, 2025, a Registered Professional Planner and full member of the Canadian Institute of Planners qualified as an expert to provide professional opinion in the area of Land Use Planning, with exhibits attached thereto (marked as Exhibit 3);

ii. The uncontested *viva voce* evidence of Ms. Philips;

iii. The oral submissions of Johanna Shapira, Counsel for the Appellant, in support of the settlement;

iv. The oral submissions of Alexandra Whyte, Counsel for the Town, including the adoption of the evidence of Ms. Philips, in support of the settlement;

v. The oral submissions of Samantha Trottola, Representative for the County, including the adoption of the evidence of Ms. Philips, in support of the settlement;

vi. Draft instruments in support of the proposed settlement, including the draft OPA modifications and the Comprehensive ZBA (Exhibits “P”, “Q”, “R” and “S”, respectively, to the Affidavit of Ms. Philips);

vii. Minutes of Settlement between the Statutory Parties executed on April 29, 2025 (Exhibit “L” to the Affidavit of Ms. Philips); and,

viii. The underlying Municipal File containing all technical studies and updated reports including but not limited to, Environmental Impact Study and Species at Risk Assessment including updated Bat Survey Investigation prepared by Michalski Neilsen Associated Limited; Traffic Impact Assessment prepared by WMI & Associates Limited; Planning Justification Report prepared by Celeste

Philips Planning Inc.; Functional Servicing and Stormwater Management Report prepared by WMI & Associates Limited; Stage 1 Archeological Assessment prepared by AMICK Consultants Limited; and Hydrogeological Study and Water Balance Analysis prepared by Wilson Associates Consulting Hydrogeologists.

SUBJECT PROPERTY AND APPLICATION HISTORY

[6] The Subject Property is currently vacant consisting of approximately 11.5 hectares (28.4 acres) of land, situated south of Broad Street, east of Fox Street, west of Church Street and adjacent to the northerly terminus of Beck Boulevard. It is designated 'Settlement' within the County's OP, and 'Neighbourhood Area' within the Town's OP. Schedule B1 to the Town OP also depicts an Environmental Protection Overlay on the Subject Property, which is addressed further below. It is further zoned 'Deferred Development D' in the Comprehensive ZBL. The property is surrounded by existing residential development consisting of detached dwellings to the north, west and east, and land-leased community consisting of single, semi-detached and townhouse dwellings to the south.

[7] In early 2018, the Appellant originally proposed to develop the entirety of the Subject Property with both single detached and townhouse residential units. As a result of concerns raised by area residents, the application was abandoned, and the Appellant re-engaged the community about an alternate development concept that preserved the northerly part of the Subject Property as 'Open Space' and focused the residential units on only the southerly part of the property. Those efforts lead to detailed studies, reports and plans, and through close work with the Town and County, has culminated in a settlement of the Proposed Development presented at this Hearing.

[8] To ensure that the Proposed Development was appropriately reflected, in 2019 the Appellant filed the OPA appeal (21-001864), specifically scoped to those provisions in the new Town OP that related to the Natural Heritage features, the road network, and policy overlays in connection with the Subject Property.

[9] In June 2022, the Town enacted the new Comprehensive ZBL (No. 2022-17). Similarly, and in order to ensure that the Proposed Development was not precluded, the Appellant appealed the Comprehensive ZBL, scoped to the Subject Property.

[10] This Tribunal has held several CMC's in connection with the OPA and the Comprehensive ZBL. On the consent of the Parties, and by prior Order of the Tribunal those two appeals were directed to be held in abeyance to allow the processing of the Appellant's Site Specific ZBL and new development concept. All other appeals of the Town OP and Comprehensive ZBL by unrelated Parties have now either been withdrawn or resolved, leaving only the Appellant's OPA and Comprehensive ZBL appeals remaining active.

[11] In October 2024, on the recommendation of Town Staff, Council for the Town approved the proposed Draft Plan of Subdivision (PEN-SUB-2022-01) in respect of the Proposed Development and associated Site-Specific ZBL. However, to address some initial concerns with parts of the Site Specific ZBL, in November of 2024, the Appellant filed the Site Specific ZBL appeal, following which the Parties reached settlement on the Proposed Development which would dispose of all three appeals, and entered into Minutes of Settlement of all three instruments being the Town OP, the Comprehensive ZBL and the Site Specific ZBL.

ORDER FOR CONSOLIDATION

[12] The Appellant filed a Notice of Motion dated June 13, 2025, seeking an Order to consolidate all three appeals: the OPA, the Comprehensive ZBL and the Site Specific ZBL.

[13] The Tribunal is of the view that the OPA, the Comprehensive ZBL, and the Site Specific ZBL are intrinsically linked with common issues of law and fact including common geographical area, planning considerations and statutory Parties. The Tribunal accepts that there will be overlapping experts and evidence among the three appeals and that a consolidation order would represents a fair and efficient way to deal with all issues affecting

the Proposed Development, will not result in any prejudice, and will avoid the potential for contradictory decisions or for a decision in one matter to predetermine another.

[14] Accordingly, the Tribunal grants the request for a consolidation order under its jurisdiction pursuant to ss. 12(2) and 13(1)(d) of the *Ontario Land Tribunal Act*, and rule 16 of the *Ontario Land Tribunal Rules of Practice and Procedure*.

PROPOSED DEVELOPMENT AND AMENDMENTS SOUGHT

[15] The Proposed Development consists of 88 condominium townhouses developed with full municipal services on an internal condominium road network. An open space buffer consisting of a 10m width, at minimum, is proposed adjacent to the western, southern and easterly boundaries of the Subject Property. The Draft Plan of Subdivision, while not before the Tribunal on the present appeals, depicts that approximately forty-seven percent (or thirteen acres) of the northerly part of the Subject Property will remain open space land, approximately forty-five percent of the lands will form the residential development, and the balance will be reserved for stormwater management pond and roadway.

[16] In order to facilitate the Proposed Development and Draft Plan of Subdivision approved by Town Council, the OPA is required which proposes to:

i. Amend Schedule A of the Town OP related to Land Use Structure in order to remove the green line representing a potential watercourse;

ii. Amend Schedule B1 of the Town OP to remove the Environmental Protection Overlay on the Subject Property; and,

iii. Amend Schedule C of the Town OP related to the Transportation Network in order to depict the new roadway at Beck Boulevard proposed to extend north and then westerly to connect to Fox Street.

[17] The Comprehensive ZBA is required to rezone the Subject Property from ‘Deferred Development D’ to ‘Residential Three Exception 99’ (“R3-99”) and Open Space (“OS”). The R3-99 proposes to add specific zoning standards to effectuate the Proposed Development.

[18] In respect of the Site Specific ZBL, the Appellant’s initial concerns related to lot coverage requirements for accessory dwellings not being reflective of the Proposed Development, leading to the cautionary appeal. The Parties now confirm that the Site Specific ZBL does not create concerns related to lot coverage and therefore the Tribunal is requested to direct an amendment of the Comprehensive ZBL that would effectively incorporate the standards contained in the Site Specific ZBL.

ANALYSIS AND DECISION

[19] The Tribunal accepts the uncontroverted opinion evidence of Ms. Philips and similarly makes findings that include, but are not limited to, the following:

i. The Subject Property, as Settlement Area in the County OP and Neighbourhood Area in the Town OP, is suitable for residential intensification and development;

ii. The Subject Property is suitable for low-rise residential development as it is adjacent to existing residentially developed areas with nearby access to transit, services and amenities, and an adequate supply of accessible parking;

iii. The southerly portion of the Subject Property is a suitable area for low-rise residential dwellings, while maintaining the northerly portion as passive open space lands is appropriate;

iv. The Subject Property is suitable for development as the site would be fully serviced by existing municipal sanitary and water services, while waste management will be the responsibility of the future condominium corporation;

v. Boundaries of an Environmental Protection Overlay may be refined through an Environmental Impact Study (“EIS”), which study was completed and concluded that there was no watercourse on the Subject Property and that the Proposed Development would not have any adverse impacts to the environment;

vi. Archaeological Assessment concluded that the Subject Property is unaffected by archeological artifacts;

vii. Engineering Reports have concluded that servicing and stormwater management as well as traffic of the site can be efficiently serviced;

viii. The Proposed Development would provide a variety of housing types available in the Town, with the possibility that some units may be made available on a rental basis thereby providing an opportunity for affordable housing;

ix. The Proposed Development would contribute to helping achieve the minimum density targets of the Town;

x. The Proposed Development, being located within the Town’s built boundary, would assist the Town in meeting its intensification target; and,

xi. The Proposed Development is supported by the policies within the Town OP encouraging the diversification of the housing stock and the need to increase the availability of other housing types for existing and future residents.

[20] The Tribunal accepts the opinion evidence of Ms. Philips and similarly finds that the Proposed Development has regard to those applicable matters of provincial interest found in section 2 of the *Planning Act*, is consistent with the Provincial Planning Statement 2024, conforms to the County Official Plan, conforms to the Town Official Plan, and otherwise reflects principles of good land use planning and is in the public interest.

ORDER

[21] **THE TRIBUNAL ORDERS** that the request for consolidation is granted and the Tribunal File Nos. 24-001244 and 21-001864, be and are hereby consolidated with Tribunal File No. 22-004317, in accordance with Rule 16.2 of the Tribunal's *Rules of Practice and Procedure*.

[22] **AND THE TRIBUNAL ORDERS** that the appeals are allowed, in part, and:

i. The Official Plan for the Town of Penetanguishene is modified as set out in **Attachment 1** to this Order. The Tribunal Orders that the Official Plan is approved as modified;

ii. The Zoning By-law No. 2024-43, to amend Zoning By-law No. 2000-02 is hereby repealed and replaced by the newly amended Comprehensive Zoning By-law No. 2022-17 as set out in paragraph 22(iii) below; and,

iii. The Comprehensive Zoning By-law 2022-17 is hereby amended as set out in **Attachment 2** to this Order. The Tribunal authorizes the municipal clerk to assign a number to this by-law for record keeping purposes.

[23] **AND THE TRIBUNAL ORDERS** that it may be spoken to in the event that some matter should arise in connection with the implementation of this Order.

"N. Eisazadeh"

N. EISAZADEH
MEMBER

Ontario Land Tribunal

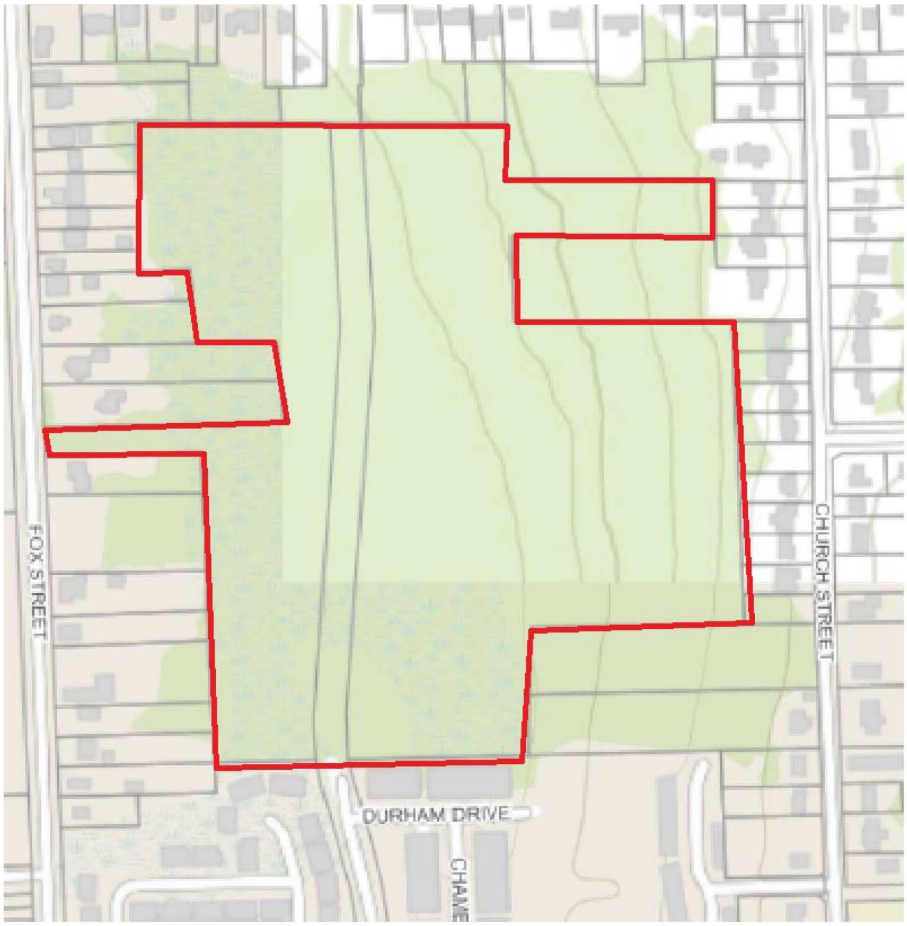
Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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

Schedule 1

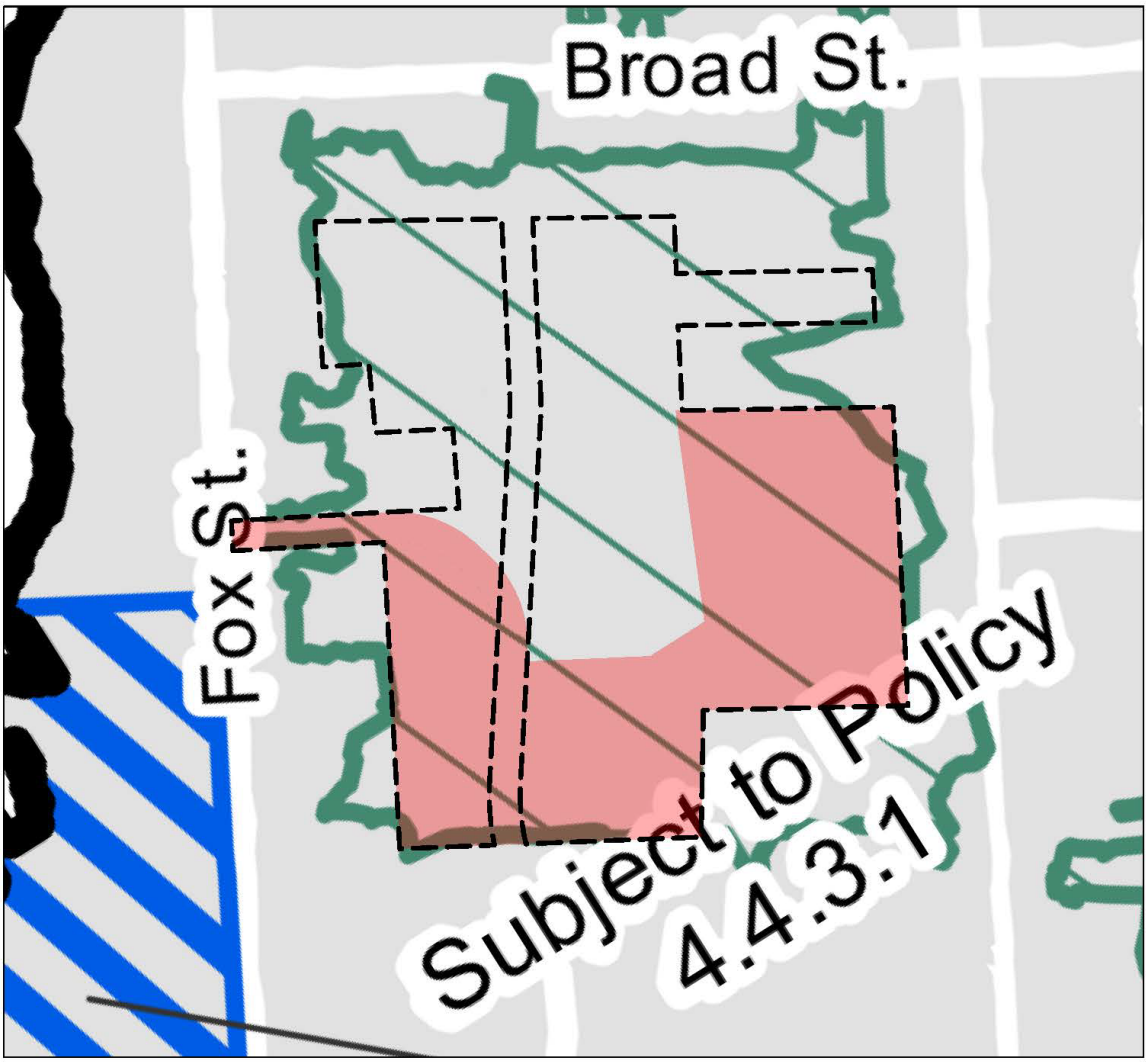
OFFICIAL PLAN SCHEDULE A MODIFICATIONS



LEGEND

SCHEDULE A TO BE MODIFIED TO REMOVE ENVIRONMENTAL PROTECTION AREA (EP) FROM THE SUBJECT LANDS

OFFICIAL PLAN **SCHEDULE B1 MODIFICATIONS**

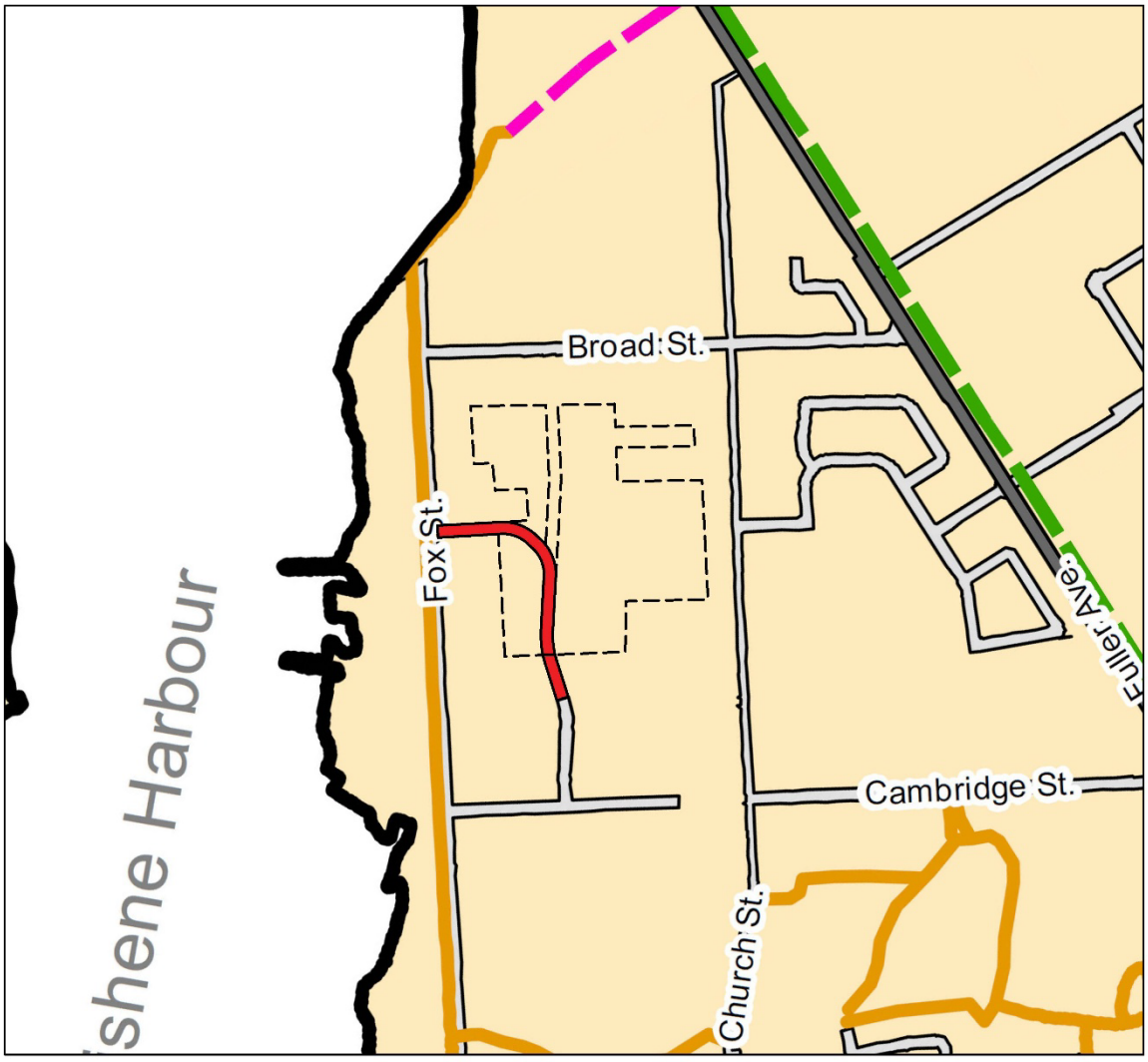


LEGEND

SUBJECT LANDS
(Roll Number 437201000808400 & 437201000808410)

SCHEDULE B1 TO BE MODIFIED BY REMOVING THE ENVIRONMENTAL PROTECTION OVERLAY FROM THESE LANDS

OFFICIAL PLAN SCHEDULE C MODIFICATIONS



LEGEND

SUBJECT LANDS
(Roll Number 437201000808400 & 437201000808410)

ROAD TO BE IDENTIFED AS A LOCAL ROAD
(BECK BOULEVARD)

ATTACHMENT 2

Schedule 2

BY-LAW NO. 2025-XX [OLT]

of the

CORPORATION OF THE TOWN OF PENETANGUISHENE

Being an order to Amend Zoning By-law 2022-17, as amended of The Corporation of the Town of Penetanguishene (221 Fox Street)

WHEREAS pursuant to Section 34 of the Planning Act, R.S.O. 1990, Chapter P.13, as amended, the Council of the Town of Penetanguishene passed Zoning By-law 2022-17, which by-law was appealed to the Ontario Land Tribunal for lands known as 221 Fox Street;

AND WHEREAS the Council of The Corporation of the Town of Penetanguishene has received an application to amend Zoning By-law 2000-02, as amended, as such by-law applies to the lands known as 221 Fox Street;

AND WHEREAS pursuant to Section 34 of the Planning Act, R.S.O. 1990, Chapter P.13, as amended, the Council of the Town of Penetanguishene passed Zoning By-law 2024-43, being a by- law to amend Zoning By-law 2000-02, as amended in respect of 221 Fox Street;

AND WHEREAS Zoning By-law 2024-43 was appealed in part to the Ontario Land Tribunal (the "Tribunal") pursuant to subsection 34(19) of the Planning Act, R.S.O. 1990, Chapter P.13*;*

AND WHEREAS the applicable requirements of the Official Plan have been met;

AND WHEREAS the Tribunal pursuant to section 34(26) of the Planning Act*,* R.S.O. 1990, as amended, has the authority on appeal by an applicant from the decision of Council, to direct the amendment of a municipality's Zoning By-law;

NOW THEREFORE the Tribunal Orders:

1. That By-law 2024-43, to amend Zoning By-law 2000-02 is hereby repealed and replaced by this By-law No. 2025-XX, to amend Zoning By-law 2022-17.

2. Schedule "A" to By-law 2022-17 as amended, is hereby amended by rezoning the lands shown on Schedule "A" attached hereto and forming part of this By-law composed of Part of Lots 104 to 113 West of Church Street, Registered Plan 70, in the Town of Penetanguishene, County of Simcoe, from the Deferred Development "D" Zone to the Residential Three Exception 99 (R3-99) Zone and the Open Space (OS) Zone.

3. That Subsection 11.1 and Table 11.1 of By-law 2022 -17 as amended is hereby further amended by the addition of a new row 99 which shall read as follows:

Notwithstanding the zone regulations under Section 6.3 and Table 6.3.1 for Townhouses, the following shall apply:

Exception Number	Additional Permitted Uses	Restricted Uses	Special Provisions
R3-99	N/A	N/A	Minimum Lot Area 180 sq. m Minimum Required Front Yard – 3.4 m Minimum Required Exterior Yard – 2.4 m Maximum Required Lot Coverage – 55%

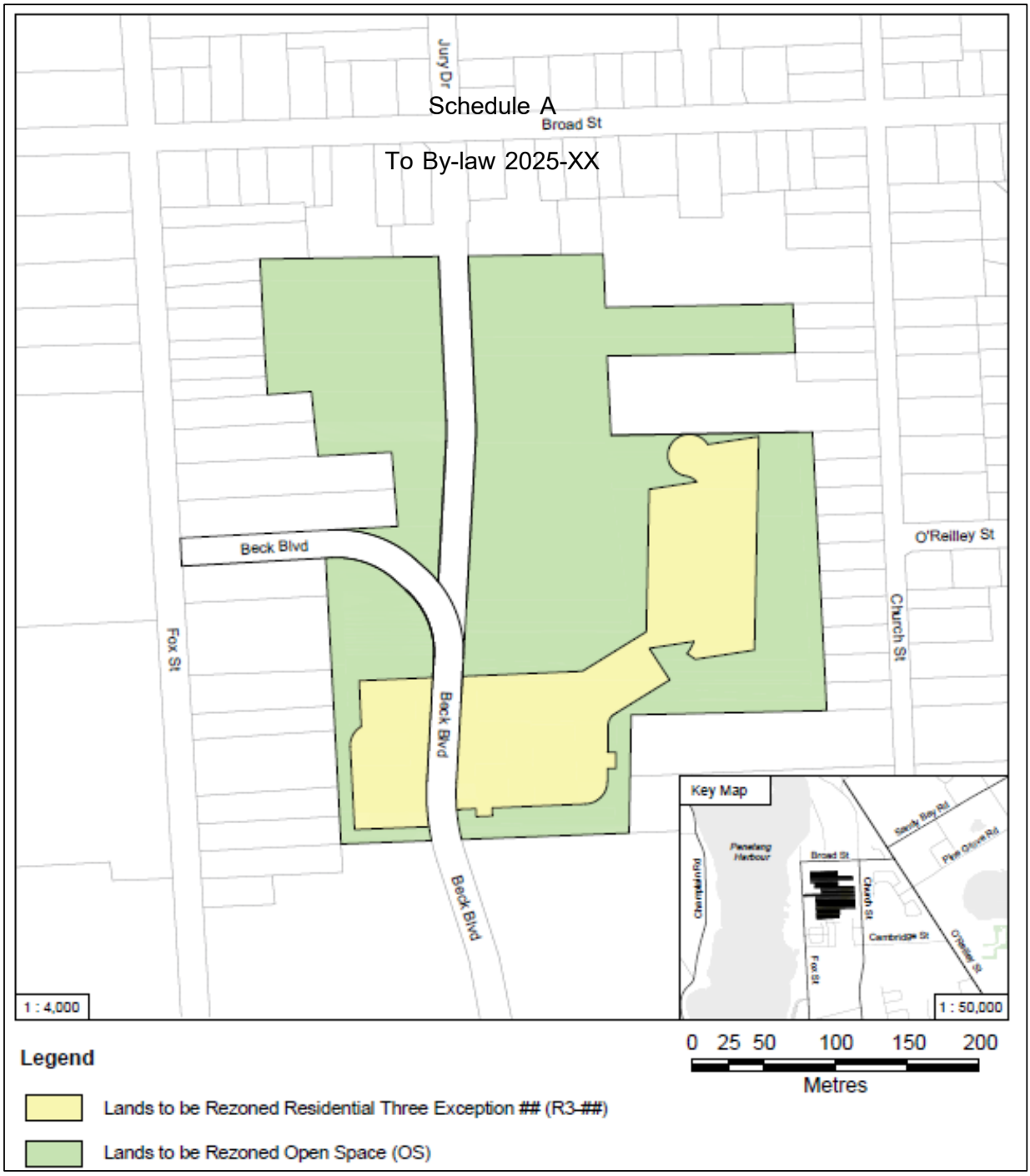
4. All other provisions of By-law 2022-17 as amended remain in full force and effect.

5. This by-law shall take effect and come into force pursuant to the provisions and regulations made under the Planning Act, R.S.O. 1990, as amended.

Ontario Land Tribunal Order issued on July 3, 2025

Schedule A

To By-law 2025-XX



Legend

Lands to be Rezoned Residential Three Exception ## (R3-##)

Lands to be Rezoned Open Space (OS)