

LOCAL PLANNING APPEAL TRIBUNAL
Tribunal d'appel de l'aménagement local

PROCEEDING COMMENCED UNDER subsections 22(7), 34(11) and 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Langmaid's Island Corporation
Subject: Proposed Official Plan Amendment No.: OPA 01/18 LOB;
Proposed Zoning By-law Amendment No.: Z/11/2018/HTE;
Proposed Zoning By-law Amendment No.: Z/12/2018/HTE; and
Plan of Subdivision No.: S201 8-1
Property: Langmaid's Island, 3933 South Portage Road and 4215 South
Portage Road
Municipality: Township of Lake of Bays and Town of Huntsville
L.P.A.T. Case No.: PL180898
L.P.A.T. File Nos.: PL180898, PL180899, PL180911, PL180912 and PL180916

**WRITTEN ARGUMENT OF THE LAKE OF BAYS ASSOCIATION
and THE LAKE OF BAYS HERITAGE FOUNDATION**

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OVERVIEW OF ARGUMENT

1. This case involves an inquiry into the true purpose of the official plan policies for Langmaid's Island and, at the same time, a consideration of how those policies came to be and the degree to which the public can rely on them. In our respectful submission, the case presents a stark choice between a "private opportunity" and a "public opportunity".
2. Choosing the private opportunity requires the Tribunal to accept the position that the historic recognition and designation of Langmaid's Island as a Muskoka Heritage Area was based on incorrect or incomplete facts and that the Island should be developed much like the rest of the shoreline of Lake of Bays.
3. To favour the private opportunity you must also find that the policies in the Lake of Bays Official Plan that call for the preservation of Langmaid's Island by limiting the creation of new lots should be repealed and replaced with policies that allow the subdivision of the Island into 32 lots.
4. To permit the private opportunity you must accept that the introduction of two large parking lots and the provision of over-sized, commercial-grade docking, with all the associated facilities and structures and intensive activities, into a quiet cottage community and an already over-capacity bay, satisfies all the tests in the District Official Plan and the Town of Huntsville Official Plan, will be able to exist in harmony with the neighbouring cottages, and represents good planning.
5. As you consider your decision, we know that you may be tempted to accede to the request by the developers, knowing that they paid something in the order of \$10 Million for Langmaid's Island and that they may suffer some economic harm if they do not succeed. Or, more dramatically, that, somehow, they are being deprived of some "rights".¹

¹ *Rodriguez Holding Corp v Vaughan (City)*, [2006] OJ No 3343- LOBA & LBHF Book of Authorities, Tab 12

6. On the other hand, the public opportunity was championed by the Township, the Town, two long-established lake associations, the Participants and Mr. Zytaruk. Choosing the public opportunity will recognize the value of heritage landscapes promoted by these public agencies and residents, and the ability of local municipalities to protect those values in their official plans.

7. Acknowledging the public opportunity will enhance the public's confidence in their local planning priorities and the community decision-making process that led to them, and avoid disappointment and disenchantment, not only with the loss this particular heritage area, but with a planning process that seems defenseless in the face of development pressures.

8. The developers bought the Island with full knowledge of the restrictions in place and likely paid a price that reflects those restrictions. They have clearly invested heavily in the prosecution of these appeals, but those expenditures were at their own risk and should not tip the scales to the private opportunity over the public opportunity. Yes, the Lake of Bays Heritage Foundation had an option to purchase the island, but for a volunteer agency with only 30 days to raise in the order of \$10 Million was just not possible.

9. Moreover, in our respectful submission, the evidence offered in support of the public opportunity is by far the best evidence heard at this hearing, truly reflecting the intent and purpose of the official plan policies of the Township of Lake of Bays, the Town of Huntsville and the District of Muskoka.

10. To that end, we respectfully submit, first, that Dr. Coleman carefully and objectively established the on-going validity of the natural heritage values for which Langmaid's Island was designated as a Muskoka Heritage Area and, second, that it was the unanimous opinion of the Director of Planning for the Township of Lake of Bays, the Director of Planning for the Town of Huntsville and the former Director of Planning for the Township of Muskoka Lakes that the applications should be refused.

THE LAST MINUTE AMENDMENTS

11. I would also like to comment at the outset on the last minute amendments presented to the Tribunal in reply evidence. It is my respectful submission that the Tribunal should recognize them for what they are, too little, too late.

12. Of particular concern, the amendments no longer seek approval for 32 lots, but “up to” 32 lots. Although they have tried to characterize this adjustment as “clarifying” the application, in my respectful submission, the adjustment can only be seen as an acknowledgement that after 17 hearing days they have not made their case for the subdivision of Langmaid’s Island into 32 lots. This qualifier is of no assistance and is plainly seductively offered as a way of shifting the difficult decision to “Phase 2”.

13. I suspect that they will suggest that the task of determining the actual number of lots to be created is a matter for Phase 2. I would strenuously implore the Tribunal to reject this approach. In my respectful submission, if the official plan amendment and development permit are approved at “up to” 32 lots, there will be little ability for the Tribunal to reduce the number at Phase 2 under the provisions of section 51 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the “*Planning Act*”) and certainly no inclination on the part of the developers to accept anything less. With respect and tempting as it might be to postpone the difficult decision, I submit that your decision on Phase 1 must be made based on full approval for 32 lots, and nothing less.

14. It is also my respectful submission that you were given no evidence about the appropriateness of any number of lots other than 32. In fact, I believe the planners called on behalf of the developers were unflinching in their insistence that this was the number they considered and supported. Of course, coming as it did in “reply”, none of the Township, the Town, or my clients were able to respond to with what might be an appropriate number of lots.

15. My submission argues for two principal findings: 1) The applications to amend the Township’s Official Plan and Development Permit By-law are not consistent with the PPS, do not conform with the District or Township Official Plans, and do not represent good planning; and 2) The applications to amend the Town of Huntsville Zoning By-law do not conform with the District or the Town Official Plans, have an unacceptable impact on and are not compatible with the South Portage Road community.

16. I will begin with a short summary of the nature and extent of my clients’ interests in these proceedings, followed by review the law on the proper interpretation of official plan polices, discuss the expert evidence that was heard and that provided by the Participants.

LAKE OF BAYS ASSOCIATION AND LAKE OF BAYS HERITAGE FOUNDATION**MARY ANN PEDEN**

17. As the Tribunal will recall, Ms. Peden has been the president of the Lake of Bays Association (“LOBA”), since 2018. She has been a cottager on the Lake of Bays her whole life, her family has had a cottage in the Black Point area since 1950 and she has been in her cottage on Bigwin View Lane with her husband since the 1980’s.

18. LOBA was founded in 1926 and was incorporated without share capital in 1978. LOBA currently has 1175 members, governed by a volunteer Board of Directors. The purpose of the Association is to promote, sustain and enhance a clean and healthy natural environment, a well serviced community, and a safe and peaceful Lake of Bays.

19. LOBA provides advice, input and assistance to the Township, reviewing and commenting on projects such as the proposed Community Planning Permit System, Short Term Rental Accommodation, and the Noise By-law.

20. LOBA keeps their members apprised and aware of issues and concerns through communication in their newsletter², newsflashes, an annual yearbook, social media, and their website.

21. It was Ms. Peden’s evidence that LOBA has participated in the development of land use planning since the early 1960’s and has taken an active role in the establishment and revisions of the District of Muskoka and Township of Lake of Bays Official Plans and the Development Permit By-law. Ms. Peden stated that the DPBL is strongly supported by LOBA due to its emphasis on environmental protection and responsible land and waterfront development.

22. It was Ms. Peden’s evidence that LOBA had significant concerns with the proposed development of Langmaid’s Island, since the original proposed application with 36 lots was presented in 2017. Ms. Peden later advised that LOBA has provided regular communication to their members on the issue of Langmaid’s Island over the past three years and all comments and questions received from their membership has been in support of their approach.

² Exhibit 62

23. Ms. Peden explained that the island is special, as it is the only large undeveloped island left on Lake of Bays, a lake that is largely developed with recreational properties. Ms. Peden explained that with the exception of Bigwin Island, there are 16 islands on the lake, each with individual owners who have 2-3 structures at most. It is for this reason that Ms. Peden believes that the island is considered unique and recognized as a Muskoka Heritage Area.

24. Ms. Peden notes that the Lake of Bays has very little crown land left on the waterfront and there are only two Natural Heritage Areas: the Lower Oxtongue River to the North and Langmaid's Island to the south. There are two Natural Heritage Areas in the Huntsville portion of Lake of Bays: Wadis Creek and Westermain Woods.

25. With the advice of Dr. Coleman and Mr. Fahner, it is LOBA's understanding that the development proposal of 32 cottage lots and septic fields, boathouses, three sleeping cabins, accompanying parking facilities, dockage, boat traffic, shuttle service and associated barging for construction and servicing do not satisfy the goals and intent of the island's Heritage designation.

26. It is the opinion of LOBA that the protection of these very limited Natural Heritage Areas is essential to maintaining the intended balance of pristine naturalization within a largely developed community.

27. On behalf of LOBA, Ms. Peden felt that giving permission for a development of this scale does not place a priority on the protection of the Heritage values as stated in the DOP, TOP, and HOP and will place the preservation of the island and other Muskoka Heritage areas on private lands at risk.

28. In March 2018, LOBA and LBHF decided to work together to review the development proposal in detail and hired Dr. Coleman to prepare an analysis and report on the proposed development.

29. In May 2018, Ms. Peden stated she attended the second open house held by LIC, which she stated, "appeared to be more of a real estate marketing meeting intended to promote their proposal".

30. Ms. Peden thought it important to express to the Tribunal that at the Public Meeting held by the Township in June 2018, 40 written submissions were received and 38 opposed the application.³

31. Ms. Peden notes that LOBA along with the LBHF in the past two months have almost reached their fundraising goal for this appeal, receiving over 288 donations from our joint members.

32. In describing her experience on Lake of Bays, Ms. Peden spoke to her experience with Bigwin Island as her cottage is directly across from Bigwin and about a half kilometer northeast of the Norway Point parking and boat shuttle.

33. Ms. Peden opined that it is inappropriate and an error to make any comparisons between Langmaid's Island and Bigwin Island. Ms. Peden noted that there may be lessons to be learned from what has taken place over the past almost 30 years since Bigwin became re-established as a resort and golf club.

34. Bigwin Island is the largest island in all the Muskoka Lakes and is substantially different from Langmaid's. Bigwin is 222 hectares compared to Langmaid's 59.5 hectares making Bigwin over three and a half times the size.

35. Ms. Peden spoke to the history of Bigwin Island, its operation as a resort in the 1920's and the subsequent development of condominiums, cottages, restaurant, golf course that has continued since. Ms. Peden spoke to Bigwin's application for plan of subdivision in the late 1990's with temporary construction access from the Port Cunnington landing which was opposed by the Port Cunnington Ratepayers Association and was the subject of a hearing before the OMB.

36. Ms. Peden expressed concern relating the years of ongoing and post development issues faced by the Port Cunnington Ratepayers Association and how it is similar to the concerns expressed by the Participants relating to traffic related to construction and service vehicles, safety concerns, increased boat traffic in narrow channels, and barging. Ms. Peden notes that barging has continued to support construction of additional projects on Bigwin despite an agreement in the OMB decision to discontinue barging once construction of the golf course was complete.

³ Exhibit 65

37. Looking to Norway Point, Ms. Peden said that it has also resulted in similar issues of increased boat, barge and ferry volume, and increased island residents, golfers and service vehicles on a secondary road primarily servicing cottages and residents similar to Port Cunnington Road and South Portage Road.

38. Ms. Peden personally has observed three individual ferries running approximately every 10 minutes between Norway Point and Bigwin Island from 5am to midnight, seven days a week with peak volume on summer weekends.

39. Ms. Peden notes that the increased volume of ferries and wave action have resulted in notable shoreline erosion and decreased water depth due to silting along the shoreline east of Norway Point.

40. Ms. Peden believed that many comparisons were made between the development on Bigwin Island and the proposed Langmaid's Island development to the Tribunal. It is her opinion that the evolution of the Bigwin Island development bears no resemblance to the proposed development on Langmaid's Island and that the concerns and issues evolving from Bigwin need to be carefully considered and evaluated before any significant island development is considered.

41. In her conclusion, Ms. Peden told the Tribunal that it bears repeating that Langmaid's Island is a scenic, beautiful and virtually undeveloped island that is an iconic part of the Lake of Bays landscape and well known to the entire Lake of Bays community.

42. Ms. Peden stated that this proposal is the largest application for a plan of subdivision in nearly 30 years and nothing is comparable to it on the mainland. Ms. Peden said that the proposed development will impact the surrounding community in a 360-degree radius for many, many years to come, if approved.

43. Ms. Peden's opinion is that the many issues and concerns of the proposal should not be analyzed in isolation from one another. Ms. Peden speaks for LOBA in stating that they feel strongly that the development proposal, when considered as a whole, represents a density and intensity of development that negatively impacts the natural heritage values of the Island, presents public safety and environmental concerns and is incongruent with the surrounding community.

JUDITH MILLS

44. The Tribunal will recall that Ms. Mills is the President of the Lake of Bays Heritage Foundation (LBHF). She currently resides on 10 Mile Bay on the Lake of Bays and her grandchildren are 6th generation on the lake.

45. The LBHF is a registered charity and land trust focused on preserving the heritage of the Lake of Bays region. It was founded in 1985 and currently has 1,017 individual members.

46. The LBHF mission is to engage the community in the preservation of its natural and community heritage for the enjoyment of present and future generations. Ms. Mills stated that they are a “working board” with 13 Directors who are all volunteers and are permanent or seasonal residents of the Lake of Bays region.

47. Ms. Mills explained to the Tribunal that LBHF had experience in retaining experts, having had biological and ecological studies conducted, a species at risk study done at Marsh’s Falls, and hired Ken Towle in 1988 to complete a study to identify where the environmentally sensitive areas were.

48. LBHF has stewardship over three properties: Boothby Property on Dwight Bay, John Pyke forest, and Marsh’s Falls in the lower Oxtongue River, totaling 317 acres and 5.3 kilometres of shoreline. Ms. Mills explained that to “steward” is to look after, ensuring natural values are preserved.

49. Ms. Mills explained that the Foundation seeks to promote the protection of the natural heritage on Lake of Bays in four ways: acquisitions, conservation easements, land donations, and education and voluntary stewardship. With acquisition as the strongest protection form, the Foundation establishes a baseline for what condition the property is in, its value and ecological significance and then a resolution is passed by the board so that the property is protected in the perpetuity. The LBHF purchased the Marsh’s Falls property outright and it is registered in the Foundation’s name.

50. Ms. Mills also spoke to the importance of education and voluntary stewardship. The Foundation encourages individuals to steward their own property, providing information videos such as the importance of shoreline protection, advice on government programs such as Managed Forest Agreements, and the hosting of nature events such as guided paddles.

51. Ms. Mills noted that LBHF also assisted in a review of changes to the Township of Lake of Bays Official Plan.

52. Speaking to the history of Langmaid's Island, Ms. Mills explained that its owner, Henry Adamson, was a member of the founding board of the LBHF. The Island had been abandoned in recent years as Mr. Adamson had health issues that prevented him from travelling. He passed away unexpectedly in 2014 as the result of an accident.

53. Ms. Mills stated that Foundation was very interested in the Island as a whole. The Foundation regarded the shoreline and habitats to be very special, and its protection equally so, especially as there will be continued development on Lake of Bays and no protection of crown land.

54. It has been stated that Mr. Adamson wanted the Island to be preserved in its natural state, and that LBHF was given a first right of refusal on the property. Ms. Mills explained to the Tribunal that the Foundation worked on ways to have the property donated with an accompanying tax receipt which proved difficult as Mr. Adamson was an American citizen.

55. The foundation worked with the American Friends of Canadian Conservancies and the Nature Conservancy in hopes that it could be donated in the U.S. and then transferred to them, but was ultimately told by the estate executor that a donation with a tax receipt would not maximize the estate and the island would be sold and LBHF would have a 30 day right of refusal. The Foundation began raising funds for its purchase, estimating \$8-10 million would be required. An offer was made by a family at \$8 million, but it was signed back at \$14. The estate executor told LBHF that the price would gradually be reduced.

56. However, a few months later LIC made an offer which was accepted with the LBHF having a 30 day right of refusal, and LBHF were unable to raise the rest of the money needed in the time permitted.

57. Ms. Mills explained that the Foundation then turned focus to the protection of the heritage values on the Island.

58. It was Ms. Mills evidence that after a meeting with Mr. Dymant in October 2017, she was left with the impression that Mr. Dymant seemed to support a balanced view and he indicated that the proposal would be at a gold standard. In November, the Directors were then shown a proposal

for 37 lots and “open space zoning” held by each of 15 lot owners with a conservation easement held by a Not-For-Profit company managed and directed by the lot owners to which they expressed concern. The company would also manage and oversee the mainland parking, garbage collection and the shuttle.

59. Ahead of the June 2, 2018 Public Meeting, the LBHF submitted a letter of concern in response to the Planning Justification Reports and associated documents for the proposed development⁴. As presented to the Tribunal, the letter details the importance of Langmaid’s 6,000 metres of undisturbed shoreline, its designation as a Muskoka Heritage Area, and its recommendation as a candidate ANSI.

60. The letter of concern as presented also spoke to the conservation methods. In her testimony, the Tribunal will recall that Ms. Mills spoke to the conservation proposal. In response to Mr. Dymont’s comments on conservation easements in favour of conservation land trusts, Ms. Mills opined that the structure was not clear. It was her opinion that conservation easements would be required on blocks A, B, C, and D, yet Appendix E had blocks A and B as transferred to and owned by a Not-For-Profit company. Ms. Mills stated these appeared to be different ideas that were not consistent.

61. In her conclusion, Ms. Mills advised the Tribunal that there are 69 Muskoka Heritage Areas (MHA) and sites in Muskoka. There are seven in the Township of Lake of Bays and two other MHAs on Lake of Bays but in the municipality of the Town of Huntsville. Ms. Mills opined that she is unaware of any MHAs that have been developed. Ms. Mills re-iterated that studies were conducted, and care was taken in identifying specific lands to be protected and where development would not be appropriate and that Langmaid’s Island was among them.

62. Ms. Mills opined that *soon there will be no shoreline available* and questioned what would be the fate of other Muskoka Heritage Areas if the proposed development on Langmaid’s Island was to be approved. The Township of Lake of Bays had done what was required and created a special policy for each MHA in their jurisdiction including Langmaid’s Island. This proposal, in her opinion, opens the door to Muskoka Heritage Areas and whether the policies designed to

⁴ Exhibit 64

protect them will prevail or whether these properties will have to be in specific ownership in order to uphold their protection.

FRAMEWORK FOR REVIEW: CLEAR, CONVINCING AND COGENT PROOF

63. The applications propose substantial changes to Langmaid’s Island and the surrounding environs. There is a complex and detailed policy framework against which the applications are to be judged.

64. The Tribunal’s powers over official plans and amendments are set out in sections 17 and 22 of the *Planning Act* and are well known. Section 17(50) of the *Planning Act* empowers the Tribunal to approve all or part of a plan or an amendment to it, make modifications to all or part of the plan and approve all or part of the plan as modified or refuse to approve all or part of the plan. However, there are limitations. Under section 17(50.1) the Tribunal does not have the power to approve or modify any part of the plan that is in effect and was not added, amended, or revoked by the plan or amendment. The important policies in all three official plans must be brought to bear.

65. It is trite law that the proponent, in this case LIC, bears the onus of proof. The standard of proof before the Tribunal is on a balance of probabilities. In *FH v McDougall*, [2008] 3 SCR 41, Justice Rothstein of the Supreme Court of Canada confirmed this standard:

Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. I am of the respectful opinion that the alternatives I have listed above should be rejected for the reasons that follow. (par. 40)⁵

66. In *Rennie v. Canada (Canadian Armed Forces)*, [2016] FCJ No 962, after quoting from *FH v. McDougall*, Justice Elliott said:

⁵ *FH v McDougall*, [2008] 3 SCR 41 - LOBA & LBHF Book of Authorities, Tab 1, PDF page 15

To satisfy proof on the balance of probabilities, the evidence must be scrutinized and found to be clear, convincing, and cogent. Context is important as the inherent probabilities or improbabilities of the allegations or the seriousness of the consequences may impact how the standard of proof is met. The evidence must be scrutinized with care to determine whether it is more likely than not that an alleged event occurred.⁶

67. In *Performance Industries Ltd v Sylvan Lake Golf & Tennis Club Ltd*, [2002] 1 SCR 678, the Court said:

The modern approach, I think, is captured by the expression "convincing proof", i.e., proof that may fall well short of the criminal standard, but which goes beyond the sort of proof that only reluctantly and with hesitation scrapes over the low end of the civil "more probable than not" standard.⁷

68. Taken together, it is my respectful submission that LIC bears the burden of proving, in a clear, convincing, and cogent way, that all of the four applications are more likely than not to satisfy the applicable tests under the *Planning Act*. Moreover, the context of this case suggests that the Tribunal should be mindful of the seriousness of the consequences, i.e., loss of the protection of the heritage resource known as Langmaid's Island, when determining whether the standard of proof is met. Proof that goes beyond the sort of proof that only "reluctantly and with hesitation scrapes over the low end of the more probable than not standard" is required.

HOW TO READ AN OFFICIAL PLAN

69. In *Construction of Statutes*⁸, Driedger describes what is known as the "purposive approach":

On this approach, the text is thought of as a map or blue-print and the primary focus in interpretation is not so much the meaning of the text as the reasons for enacting it and the

⁶ *Rennie v. Canada (Canadian Armed Forces)*, [2016] FCJ No 962 - LOBA & LBHF Book of Authorities, Tab 2, PDF page 38, par. 40

⁷ *Performance Industries Ltd v Sylvan Lake Golf & Tennis Club Ltd*, [2002] 1 SCR 678 – LOBA & LBHF Book of Authorities, Tab 3, PDF page 68, par. 41

⁸ Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd edn, Butterworths 1994)

*directions in which it points. Under a purposive approach, the court defers to the legislature not by decoding its language but by ensuring that its plans are carried out.*⁹

*Policies are preferences for particular interests or compromises that the legislature wishes to promote or take into account in devising a program or rule. Policies are the result of choice in which competing interests or considerations are balanced in an expedient way.*¹⁰

*Where the ordinary meaning of legislation is ambiguous or other-wise unclear, the interpretation that best accords with the purpose of the legislation should be adopted. Where the ordinary meaning is clear, but an alternative interpretation is plausible and more in keeping with the purpose, the interpretation should be adopted.*¹¹

*From a study of the relevant case law up to date, the words of an Act are always to be read in light of the object of that Act. Consideration must be given to both the spirit and the letter of the legislation.*¹²

70. Section 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, deems enactments to be remedial:

Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

71. Similarly, section 64 (1) of the *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F provides that:

An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.

72. In the Ontario Municipal Board decision in the matter of *Sentinel (Broadway) Holdings Inc v. Toronto (City)*, [2014] OMBD No 447, the Board adopted the purposive approach, saying:

As a preliminary, it is trite but essential to state that the Board, must, in the interpretation of the Official Plan policies, eschew an approach that is narrow, fastidious, or unduly

⁹ Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd edn, Butterworths 1994) - LOBA & LBHF Book of Authorities, Tab 4, PDF page 80

¹⁰ *Ibid.* PDF page 82

¹¹ *Ibid.* PDF page 83 - *McBratney v McBratney*, [1919] SCJ No 59

¹² *Ibid.* PDF page 81 - *R v Moore (1985)*, 67 N.S.R. 2(d) 241, at 244 (C.A.)

*legalistic. Instead, it should be guided by a contextual and purposive approach, with a view of furthering the overall policy objectives of the Plan.*¹³

73. In *Bele Himmel Investments Ltd. v. Mississauga (City)* (1982), 13 O.M.B.R. 17 (Div. Ct.), the Divisional Court said:

*Official plans are not statutes and should not be construed as such. In growing communities such as Mississauga, official plans set out the present policy of the community concerning its future physical, social and economic development. In such a document there will almost inevitably be inconsistencies and uncertainties when considered in light of a specific proposal. It is the function of the Board in the course of considering whether to approve a by-law to make sure that it conforms with the official plan. In doing so, the Board should give to the official plan a broad liberal interpretation with a view to furthering its policy objectives.*¹⁴

74. In *Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, the Supreme Court of Canada finds that Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach that statutory interpretation cannot be founded on the wording of the legislation alone:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament".¹⁵

75. Applying this law to the case at bar, it is my respectful submission that the Tribunal ought not to regard itself as dealing with a blank policy canvass but must consider the proposed amendment and the sections it purports to replace in the context of and in concert with the purpose of the Township's Official Plan and, in particular, the purpose of the Langmaid's Island policies.

LANGMAID'S ISLAND POLICY FRAMEWORK - A MUSKOKA HERITAGE AREA

¹³ *Sentinel (Broadway) Holdings Inc v. Toronto (City)*, [2014] OMBD No 447 - LOBA & LBHF Book of Authorities, Tab 5, PDF page 90, par. 17

¹⁴ *Bele Himmel Investments Ltd. v. Mississauga (City)* (1982), 13 O.M.B.R. 17 - LOBA & LBHF Book of Authorities, Tab 6, PDF page 104

¹⁵ *Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 - LOBA & LBHF Book of Authorities, Tab 7, PDF page 114

76. Stephen Fahner and Derek Coleman provided compelling evidence that the applications are not consistent with the Provincial Policy Statement, do not conform to the District of Muskoka Official Plan or the Township of Lake of Bays Official Plan and do not represent good planning.

DR. DEREK COLEMAN'S EVIDENCE

77. Dr. Coleman has over 53 years of experience in environmental, ecological, and rural planning, and has appeared as an expert witness before various tribunals, including the LPAT, on more than 225 occasions.¹⁶ He was qualified to provide expert opinion evidence in the disciplines of ecology, environmental planning, photogrammetry, and the application of the Wildland Fire Risk Assessment and Mitigation Reference Manual. It is noted that Dr. Coleman was the only witness accepted by the Tribunal to provide opinion evidence in the areas of Environmental Planning and Forestry.

78. Dr. Coleman was first retained by LOBA and LBHF in March 2018 to assess the environmental impacts of the proposed development and, in particular, to review the RiverStone EIS. His analysis culminated in two Reports, the first completed in May 2018, and the second in November 2018, to respond to the revised 32-lot proposal. He also provided a Reply Witness Statement in response to the Visual Impact Assessment completed by Mr. Michael Hannay.

79. As noted, Dr. Coleman's evidence was focused primarily on assessing the environmental impacts of the proposed development and, specifically, the impact of development on the natural heritage values on Langmaid's Island. His evidence is summarized as follows:

- a) The classification of Langmaid's Island as a Natural Heritage Area ("NHA"), through the *Natural Heritage Evaluation of Muskoka* prepared under the Muskoka Heritage Areas Program in 1994 ("Reid and Bergsma Report")¹⁷ was, and remains accurate;
- b) The inventories of the features and values of Langmaid's Island, including the values for which the Island was determined to be important and protected *as a NHA* – diversity, quality, and scenic values – were not properly addressed in the Riverstone EIS or MHBC Planning Justification Reports. Nor does the EIS contain sufficient information to determine the environmental impact of the proposed development;

¹⁶ Witness Statement of Dr. Derek Coleman, Exhibit 9, pp. 4-7.

¹⁷ *Natural Heritage Evaluation of Muskoka* – Reid and Bergsma, 1994, Exhibit 40 ("Reid and Bergsma Report").

- c) The proposed development is not consistent with PPS direction, nor does it conform to the District Official Plan or Township Official Plan policies relating to conservation of the natural environment and the Island's natural heritage features;
- d) The proposed implementing By-law and mechanisms (limited zoning, conservation easements and character guidelines) are unlikely to be effective in protecting the Island's natural values; and
- e) As a result, the proposed development is not good environmental planning and should be refused.

NATURAL HERITAGE VALUES ON LANGMAID'S ISLAND

80. In order to be designated as a NHA under the Reid and Bergsma Report, a candidate area must satisfy 2 of 11 criteria. Langmaid's Island met 4 of the criteria to become a NHA: Diversity, Quality, Wildlife and Fish, and Scenic.

81. Dr. Coleman accepts RiverStone's conclusions with respect to Wildlife and Fish, however, he disagrees with its conclusions regarding Diversity, Quality, and Scenic Resources.

Diversity

82. To be considered "diverse" using the Reid and Bergsma criteria, the area must exhibit high diversity of native flora and fauna, either at the species or community level.¹⁸

Species Diversity

83. Dr. Coleman agrees with Mr. Al Shaw (and Reid/Bergsma) that Langmaid's Island does not meet the threshold for floral species diversity. However, the Reid and Bergsma Report criteria includes both floral and faunal assessments, and Langmaid's scored its highest rating points on fauna found on the Island as well as on vegetation communities.

84. Since the RiverStone EIS did not include an assessment of faunal diversity. Dr. Coleman took data from the Reid and Bergsma Report on the number of bird species per 10 hectares and found that the Island demonstrates a much higher diversity of fauna (breeding birds) than the average of the sites studied. Thus, Dr. Coleman concluded that Langmaid's Island met the Reid and Bergsma Report criteria for species diversity with respect to fauna.¹⁹

¹⁸ *Ibid*, Exhibit 40, p. 5.

¹⁹ Exhibit 9, Witness Statement of Dr. Derek Coleman, pages 63-6.

Community Diversity

85. The Reid and Bergsma Report distinguishes 14 different communities on the Island, while the RiverStone EIS notes only 10.²⁰

86. The RiverStone Response to Peer Review attempts to diminish the community diversity on the Island by concluding that there are only two areas of shallow marsh which are only a fringe and are limited in extent.²¹ However, the Reid and Bergsma Report describes the marshes as edging the Island, so, in Dr. Coleman's view, the authors were cognizant of the limited extent and this was factored into their assessment.²²

87. Moreover, Dr. Coleman testified that there is no recognized quantitative ecological measure to determine whether a candidate site/area contains a high diversity of vegetation communities. Thus, there is an irreducibly subjective element that entails the application of expert judgment to determine community diversity.

88. Dr. Coleman's evidence is that Langmaid's Island did, and continues to meet the criterion for community diversity, as it represents a high diversity of vegetation communities relative to other areas assessed in the Reid and Bergsma study, and on Lake of Bays.

89. Dr. Coleman concludes that Langmaid's Island meets the criterion for diversity (specifically community and fauna diversity), even considering it did not meet the criteria for floral diversity as it contains all the diversity of habitats originally listed in the Reid and Bergsma Report.²³

Quality and Disturbance

90. In order to meet the Reid and Bergsma criterion for Quality and Disturbance, an area must contain biotic communities of unusually high quality or showing little recent disturbance.²⁴

91. Dr. Coleman agrees with Mr. Shaw's evidence that the quality and lack of disturbance of the habitats on Langmaid's Island is unquestionable.²⁵ Dr. Coleman also agrees with Mr. Shaw's

²⁰ Exhibit 40, Reid and Bergsma Report, page 10.

²¹ Exhibit 29, RiverStone Response to Peer Review, 19 July 2018, page 11.

²² Exhibit 9, Witness Statement of Dr. Derek Coleman, pages 62-3.

²³ *Ibid*, p. 66.

²⁴ Exhibit 40, Reid and Bergsma Report, page 5.

²⁵ Exhibit 26, Riverstone EIS, January 2018, page 31.

conclusions that the Island is not a deer wintering area nor a potential area of Lake Trout spawning habitat.

92. However, as Mr. Shaw himself conceded in oral testimony, and as Dr. Coleman testified, the 1993 ANSI Report completed by Brunton (“1993 Brunton Report”),²⁶ clearly established Langmaid’s Island as a regionally significant candidate ANSI. Furthermore, Mr. Shaw also admitted in oral his testimony that, as a result of the complete 1993 Bruton Report, the description in Section D.96 (c) of the Township Official Plan is not misleading in suggesting that ANSI classification has no merit.

93. Dr. Coleman further testified that, based on the 1993 Brunton Report, and the 1994 Reid and Bergsma Report, it was and still is correct to describe Langmaid’s Island as a "regionally significant forest".

94. Dr. Coleman explained that when the 1993 and 1994 Reports were completed there was no Policy Statement on woodlands under the *Planning Act* nor even a PPS. Therefore, the term “regionally significant forest” is purely descriptive, and because the Island was identified as a regionally significant candidate ANSI, *due to its significant forest community*,²⁷ the terminology is accurate.

95. Dr. Coleman placed further emphasis on the fact that the province assigns to municipalities the authority to identify significant woodlands at the district or local level, and that is what occurred in this instance. Therefore, Langmaid’s Island is properly classified as a “regionally significant forest.”

96. Dr. Coleman also prepared an analysis of the percent of native/non-native species present as a measure of quality, since a disturbed area will frequently show more non-native (aggressive) species invading. The Reid and Bergsma Report calculates this breakdown, which Dr. Coleman verified and produced an average for areas under 1000 ha that equated to 2.19% introduced plants for Langmaid’s as compared to of 6.85% introduced plants on average for Muskoka Heritage

²⁶ Exhibit 31-32, Daniel Brunton, *Assessment of Areas of Natural and Scientific Interest in Site District 5E-8*, (1993).

²⁷ *Ibid*, Exhibit 31, pages 9, 13. The 1993 Report identified the significant forest composition as “early successional upland mixed and submature to mature late successional deciduous forest” (p. 9).

Areas. Dr. Coleman submits that on this measure, Langmaid's Island shows a better than average condition, indicating higher quality.²⁸

97. Dr. Coleman's concluded that Langmaid's Island contains biotic communities of unusually high quality and shows little recent disturbance.

Scenic Landscapes

98. To be evaluated as a scenic landscape in the Reid and Bergsma Report, an area must contain sites or landscapes with patterns of form, line, colour or texture that together present outstanding scenic value.²⁹

99. Although Dr. Coleman acknowledged that only Seagull Island and the view from the hills on Langmaid's Island were identified in the Reid and Bergsma Report as meeting the criterion for a Scenic Landscape, it was his interpretation that the authors' intention was to include Langmaid's itself as meeting this criterion.

100. Furthermore, it is Dr. Coleman's conclusion that, based on his tour of the Island, Langmaid's Island meets the criteria for a Muskoka Scenic Area used by Berney and Reid in their 1992 Muskoka Scenic Evaluation,³⁰ such that: i) Langmaid's Island is clearly visible from the lake around it where there is busy boating traffic; ii) the view or feature has a well-known reputation or significant public exposure, given the public response to the development proposal; and iii) the view of the Island from the water contains contrasting elements, colours, or Township Official Planography.³¹

Dr. Coleman's Conclusion on Muskoka Heritage Area Designation

101. Based on the foregoing analysis, Dr. Coleman concludes that Langmaid's Island currently meets the Muskoka Heritage Area designation; however, if the development were approved, the consequent adverse impacts on the Island's natural heritage values would effectively remove that designation.

²⁸ Witness Statement of Dr. Derek Coleman, Exhibit 9, p. 67.

²⁹ Reid and Bergsma Report, Exhibit 40, p. 10.

³⁰ Berney and Reid, *Muskoka Scenic Evaluation*, (1992), LIC Appeal Record, Vol 1, Tab 18.

³¹ *Ibid*, p. 70.

DEFICIENCIES IN EIS INVENTORIES AND IMPACT ASSESSMENT

102. Dr. Coleman noted the following deficits in the RiverStone EIS and related impact assessments:

- a) In neither the EIS nor the Tatham Functional Servicing Report (“FSR”) was a suitable detailed soil topography inventory/assessment available to determine feasibility and impacts at a lot level, only generalizations are presented;³²
- b) The EIS does not contain a full botanical list, which limits interpretation of the data and quality of the communities (i.e., % native/non-native) so that any analysis of the values is constrained;³³
- c) There is no analysis or criteria identifying communities to be protected as undisturbed to maintain diversity and the functioning and quality of the overall Island ecology. Various groups of biota noted in the ANSI description are not inventoried or assessed;³⁴
- d) There is no analysis in the EIS of alterations to vegetation that will occur because of the development proposal;³⁵
- e) The EIS does not show or analyze disturbances and impacts relating to lot creation;³⁶
- f) The EIS fails to analyze the impact of the proposed development on ecological fragmentation or edge effects on “forest interior habitat”. This is significant, in Dr. Coleman’s view, because the proposal will substantially negatively alter the woodland areas by creating extensive openings, reducing woodlands to less than 40 metres and eliminating all forest interior habitat.³⁷ As Dr. Coleman explained in his oral testimony, when a forest community is opened up by clearing trees, it creates a new edge. This exposes the forest interior to changed conditions including wind, light and water balance and creates opportunities for the more aggressive invasive (non-native) species to gain a foothold - all to the detriment of the sensitive interior native species. Generally, this effect occurs for about 30 metres from the new edge;

³² Exhibit 9, Witness Statement of Dr. Derek Coleman, page 23.

³³ *Ibid.*

³⁴ *Ibid*, page 27.

³⁵ *Ibid.*

³⁶ *Ibid*, pages 29-33.

³⁷ *Ibid*, page 35.

- g) The EIS fails to consider alternative “focused” development scenarios that would conform to existing polices;³⁸
- h) The EIS does not undertake a detailed Wildfire Hazard Assessment in accordance with Appendix 6 of the Wildland Fire Risk Assessment and Mitigation Reference Manual.³⁹ Dr. Coleman testified that if such an assessment were undertaken by the applicant, it would necessitate the mitigation of wildfire risk, and therefore, given the species composition and maturity of the Island’s forest communities, result in substantial vegetation removal causing adverse impacts to the biotic features of the Island. In view of its impact on the biotic features of the Island, in Dr. Coleman’s opinion, wildland fire risk is an appropriate issue for Phase 1 of the appeal.
- i) Dr. Coleman prepared an analysis of the effect of the Wildland Fire Risk requirements on five lots on the western end of the main Island⁴⁰ that illustrates those required alterations to vegetation, substantially increasing the damage from the proposal for the Island. He also noted that the policy requires that if those reduction measures are not included that the "development should not be premitted".
- j) The visual impact assessment completed by Mr. Hannay failed to depict the impact of vegetation removal permitted in the shoreline activity area and the shoreline yard, nor that resulting from wildland fire risk mitigation. Mr. Hannay’s visuals also overestimated tree dimensions, and mistakenly assumed random vegetation height and species composition. As result, Mr. Hannay’s depiction of the visual impact of the proposed development is unreliable.

INCONSISTENCY AND NON-CONFORMITY WITH POLICY

103. Dr. Coleman testified that the proposed development is not consistent with PPS direction, nor does it conform with the applicable polices of the District Official Plan or Township Official Plan.

³⁸ *Ibid*, p. 36.

³⁹ Exhibit 1, *Wildland Fire Risk Assessment and Mitigation Reference Manual*, pages 340-41.

⁴⁰ Exhibit 14, Derek Coleman Visuals #2

The Proposed Development is Inconsistent with PPS Direction

104. In general terms, Dr. Coleman's evidence with regard to the proposal's inconsistency with the PPS stems from direction provided in that document that the PPS does not prevent planning authorities and decision-makers from going beyond the minimum standards established in specific policies, unless doing so would conflict with any policy of the Provincial Policy Statement.⁴¹

105. Furthermore, the PPS provides that criteria for determining the significance of natural heritage features are recommended by the Province, but municipal approaches that achieve or exceed the same objective may also be used.⁴²

106. Dr. Coleman concludes that, with respect to the treatment of the candidate ANSI and significant woodland descriptions of Langmaid's Island, the descriptions used in the Township Official Plan section D.96(c) are supported by the PPS and are appropriate as locally significant features.⁴³ Therefore, because the proposed OPA seeks to remove D.96(c), the application is not consistent with PPS direction, in this regard.

The Proposed Development Does Not Conform to the District Official Plan or Township Official Plan

107. Dr. Coleman testified that applicable policies under the 2014 District Official Plan generally provide that protection of the natural environment and the character of shoreline areas are to take priority over development.⁴⁴

108. Although Dr. Coleman acknowledged that a 2014 District OPA is not required in this case, he referred to District Official Plan policies on NHAs that recognize Langmaid's Island as a NHA through reference to local planning documents which designate it as such.⁴⁵

109. With respect to the Township Official Plan, Dr. Coleman described general policies related to the protection of the natural values on Langmaid's Island through limits imposed on

⁴¹ Witness Statement of Dr. Derek Coleman, Exhibit 9, p. 58.

⁴² *Ibid*, p. 59; see also *2020 PPS Extracts*, Exhibit 1, p. 60.

⁴³ *Ibid*.

⁴⁴ See e.g. D.20, F.21, *2014 District of Muskoka Official Plan Extracts*, Exhibit 37, pp. 15, 21.

⁴⁵ See e.g. F.96, F.114, *ibid*, pp. 34-5,

development,⁴⁶ and that any development proposal would need to ensure the preservation of these values.⁴⁷

110. In regard to specific Township Official Plan polices relating to Langmaid’s Island,⁴⁸ Dr. Coleman testified that he reads these polices together, beginning with section 100, and by doing so, he suggests that failing to meet the feasibility test does not imply that the whole island may be subject to development. Rather, Dr. Coleman described other alternatives, which were not considered as “feasible”. For example, he described and presented a proposal of “focused development” on the already disturbed area, as a feasible option, which was never considered by the proponent.⁴⁹

111. The general directions that Dr. Coleman took from his review of the polices and applications was that:

- a. Langmaid’s Island is identified for various reasons as a significant natural area with identified values;
- b. The various planning documents (District of Muskoka Official Plan and Township Official Plan) recognize that significant character and contain policies that limit any development on the Island. Conservation is to be given priority over development. Development beyond the current use (single cottage and associated structures) requires first (D100) that the whole Island cannot be protected and, if not, a demonstration that the Island values are protected (D98 and D99). It was Dr. Coleman’s conclusion that these are not adequately protected; and
- c. There has been no examination of a “focused development” on the already disturbed area and the current proposal does not “ensure the preservation” of the Island’s values – forest, diversity, undisturbed environments. Thus, it does not meet The Township Official Plan polices, nor does it conform to the District Official Plan.⁵⁰

⁴⁶ See e.g. D.1-D.3, *Township of Lake of Bays Official Plan Extracts*, Exhibit 36, p. 31.

⁴⁷ See D.71, *ibid*, p. 48.

⁴⁸ See D.96-D.100, p. 55.

⁴⁹ Exhibit 9, Witness Statement of Dr. Derek Coleman, pages 36-7.

⁵⁰ *Ibid*, p. 36.

WEAK IMPLEMENTATION

112. Dr. Coleman's evidence was that the proposed Development Permit By-law Amendment ("DPBLA") and implementing mechanisms (limited zoning, conservation easements and character guidelines) are unlikely to be effective in protecting the Island's natural values.

113. Dr. Coleman testified that the DPBLA does not adequately control or limit vegetation removal in the shoreline activity area, nor the shoreline yard. In his experience, the protection of vegetation on a lot in private ownership after occupancy has not been successful using prohibitions/restrictions and conservation easements. In Dr. Coleman's opinion, to achieve adequate protection for vegetation, physical separation and clear demarcation are required.

114. Dr. Coleman also expressed concerns with implementing protection through enforcement measures, as by-law enforcement is complaint driven and, given the staffing constraints imposed on a small township such as the Lake of Bays, enforcing compliance with the DPBLA requirements will prove problematic.

STEPHEN FAHNER'S EVIDENCE

115. Stephen Fahner has worked as a planner for over 32 years, primarily in Muskoka. He was a planner at and ultimately the Director of Planning for the neighbouring Township of Muskoka Lakes for 25 years; a Township with three large lakes and miles of shoreline, much like Lake of Bays.⁵¹

116. While acknowledging that he was not an "expert" in the assessment of boating or visual impact, Mr. Fahner demonstrated a common sense and pragmatic approach. He is a boater and understands the constraints upon a body of water when there are too many boats or difficult docking situations. In the same vein, he has spent his career considering shoreline development and the "view from the canoe" conformity perspective.

117. Mr. Fahner explained the detailed review he conducted of the applications and the applicable policies, before accepting the retainer by LOBA and LBHF. He stated that he quickly and easily concluded that the applications were deficient.

118. Mr. Fahner explained that his review focused on good planning – consistency and conformity. His was a practical point of view – that is taking practical evaluation of a proposal and

⁵¹ *Curriculum vitae* of Stephen Fahner, Exhibit 13, page 34.

asking if it makes good planning sense. He provided the Tribunal with a reasonable and practical perspective on good planning.

119. In summary, it was Mr. Fahner's opinion that the proposed development:

- a) Is not consistent with the PPS;
- b) Does not conform to the District Official Plan, the Township Official Plan or the Town of Huntsville official plan; and
- c) Does not represent good planning.

120. Mr. Fahner explained the rationale for his opinion as including the following factors:

- a) Langmaid's Island has been a Heritage Area for over 20 years;
- b) The preservation or conservation of the island's shorelines is noted within the applicable policies;
- c) The Township Official Plan is clear that development on Langmaid's Island is to be limited, not prohibited, but extremely limited;
- d) The number of habitable buildings being proposed – 32 large dwellings, 32 boathouses and docks, 96 sleeping cabins, and many shoreline structures permitted under the Lake of Bays Development Permit By-law – would result in an unacceptable intensity of use, deficient parking, docking and spoiled views of the island, including its undisturbed shoreline;
- e) He stated that the planners for the proponent had not considered the island as part of the character of area and did not adequately take in the island as part of their analysis;
- f) The proposal did not consider the extensive tree clearing and cutting that would be required to satisfy the wildland fire requirements;
- g) He was convinced that the two proposed waterfront landings do not conform with the official plan requirements of both the Township and the Town and were not compatible with abutting properties.

121. Mr. Fahner's starting point was the policies only provided for very limited development of Langmaid's Island; noting that there are currently only two lots.

122. It was also important to Mr. Fahner that there would be no undue hardship to owners, as they had proceeded with their eyes open; they knew that development of the island was very restricted.

THE SUBDIVISION IS NOT CONSISTENT WITH THE PPS

123. It was Mr. Fahner's evidence that the proposal was not consistent with the PPS. He referenced PPS Policy 1.1.5.4⁵², requiring development to be compatible with the rural landscape and PPS Policy 2.6.1⁵³, requiring that cultural heritage shall be conserved, and PPS Policy 2.6.3, noting that 32 lots on an undisturbed shoreline which has been designated locally as a Muskoka Heritage Area, did not in his view constitute good planning.

124. Mr. Fahner talked of the importance of the geographic scale of policies, noting that the PPS represents minimum standards and that not all policies will be applicable to every site, feature or area. To that point, he observed that the PPS most likely was not always applicable to boat docks and parking. On the other hand, PPS policies on provincially significant wetlands, natural heritage feature or wildland fires certainly do apply and are important.

125. In concluding that the proposal is not consistent with the PPS, Mr. Fahner referenced, PPS Policy 4.6⁵⁴, which stresses the importance of Official Plans. He clearly understands the planning hierarchy and the "top down approach" mentioned frequently by counsel for LIC. He demonstrated a fluency with the PPS and its policies.

THE SUBDIVISION DOES NOT CONFORM WITH THE DISTRICT OFFICIAL PLAN (2014)

126. Moving to the District Official Plan (2014)⁵⁵, Mr. Fahner referenced Policy C.4 a), noting the very strong language:

C.4 a) The quality of the landscape and natural environment will be protected;

127. Policy C.7 requires the retention, enhancement, and creation of views and stated that the proposal would not conform with this policy.

⁵² Exhibit 58, page 10

⁵³ Exhibit 59

⁵⁴ Exhibit 1, Tab 2, PDF page 46

⁵⁵ Exhibit 37

C.7 Development will retain, enhance or create views and viewing points as possible and appropriate for the site.

128. Mr. Fahner stated that the development of the shoreline proposed by LIC did not conform to Policy C.9 a).

C.9 a) New uses or interests in land will be compatible with:

a) Other legally existing land uses in the vicinity so as to ensure the continued operation of such uses and to allow expansion where feasible and appropriate; and

b) The type and character of the community or area in which the use is being proposed.”

129. On District Official Plan Policy C9 b) “character”, it was Mr. Fahner’s evidence that the island was part of the community and that its undisturbed nature must be taken into account in assessing character.

130. Mr. Fahner highlighted District Official Plan Policy C 13 c), which deal with heritage areas and District Official Plan Policy F.2 b) – Significant Heritage Areas, stressing that they were to be protected and maintained in their current state; heritage areas are to be preserved and it was his clear opinion that the proposed 32-lot subdivision did not conform to this policy.

F.2 b) Significant Heritage Areas:

Significant Heritage Areas are natural or man-made features that should be protected and maintained in their current state as they enhance the character and beauty of Muskoka. Significant Heritage Areas include: historical, geological, archaeological, and scenic features.

131. Planner Fahner then reviewed District Official Plan Policies F.4 c) “scenic views” and F.4 e) “Heritage Resources”.

F.4 To maintain and enhance the quality of Muskoka's other resources by, among other matters:

c) preserving and encouraging public use of scenic views and of scenic land and water routes in the District from or on public lands.

e) encouraging the protection, maintenance, conservation and interpretation of heritage resources including archaeological sites; buildings and structures of historic and

architectural value; and those waterfront, rural and community landscapes which reflect special traditional aspects of Muskoka as contained in this Section of the Plan (specifically as detailed in those sections on wetlands, narrow waterbodies, biological constraints and significant heritage areas).

132. These were, in Mr. Fahner's view, fundamental policies that stressed preservation and protection.

133. Mr. Fahner took the Tribunal to District Official Plan Policies F.77 and its requirement of issues to be addressed in site evaluation; F.97 concerning protection from incompatible uses or activities, noting that you must consider the intensity of a use in determining whether a proposal is compatible and that a 32-lot subdivision was certainly not compatible.

F.97 Areas possessing or encompassing such values shall generally be protected from incompatible uses or activities.

134. On District Official Plan Policy F. 107 – "Scenic View Potential" it was again Mr. Fahner's opinion that a 32-lot subdivision did not maintain or improve the viewing potential to the island.

F.107 Applications for development shall have regard to maintaining or improving the viewing potential for the general public of significant scenic vistas within the District

135. District Official Plan Policy F. 114 provides that, where heritage areas have been inventoried or approved for protection in local or other policy documentation, special provisions should be established in implementing documents to adequately guarantee the protection of such heritage resources.

F.114 Where environmental or heritage areas have been inventoried or approved for protection in local or other policy documentation, special provisions should be established in implementing documents to adequately guarantee the protection of such heritage resources including, among other matters, the utilization of special zoning categories in by-laws. In the interim, and prior to the formal inventory of such resources being completed, encouragement shall be given to the use of interim control by-laws or other mechanisms to protect such resources or character areas.

136. Mr. Fahner identified that the Township Official Plan conforms with this requirement of the District Official Plan by identifying and establishing policies that “guarantee the protection” of Langmaid’s Island and, further, that the DP By-law also imposes this guarantee.

137. Finally, District Official Plan Policy F. 115 acknowledges that other heritage values (i.e., other than specifically identified in the District Official Plan) may be identified in local or other documentation and that, in the development of such provisions, heritage values should address matters of character related to built form and landscape. That is precisely what has been done in the case of Langmaid’s Island.

F. 115 As identified in Section F.77 of the Plan, other heritage values may be identified in local or other documentation. In the development of such provisions (affecting all strategic land use designations in the District), heritage values should address matters of character related to built form and landscape.

138. On the letter from District staff, Mr. Fahner said that District staff’s hands were tied and that, after noting that the District Official Plan is a “strategic plan”, they had no objection. In Mr. Fahner’s view, a “strategic plan” is less effective in governing local matters, but that, in any event, staff did identify concerns and stressed the importance of the Township Official Plan in such matters⁵⁶.

139. In my respectful submission, the strategic nature of the District Official Plan requires a greater focus and weight to be placed on the Township Official Plan.

THE 2019 DISTRICT OFFICIAL PLAN

140. It is also important to note that the new District of Muskoka Official Plan now identifies Langmaid’s Island as a Muskoka Heritage Area on Schedule C2⁵⁷

141. And while we heard much about the “Clergy Principle”, in my respectful submission, the Tribunal may evaluate these applications in light of new policies that may reflect the highest standards and good planning.⁵⁸

⁵⁶ Exhibit 35

⁵⁷ Exhibit 1, Tab 3, PDF page 82

⁵⁸ *Dumart v Woolwich (Township)*, [1997] OMBD No 1817- LOBA & LBHF Book of Authorities, Tab 9

142. In *James Dick Construction Ltd v. Caledon (Town)*, [2003] OMBD No 1195⁵⁹, the Board put it this way:

The Town argues that while Clergy may provide a good rule for most cases, in this case, a greater interest must be protected, namely the public interest in setting high modern standards of planning and policy for aggregate. In its decisions, the Board commonly balances the private interests of an industry or of an applicant with those of the public and area residents. In this case, the Town urges the Board to consider as part of the balance that it must strike, the implications of applying planning standards set twenty years ago for an application that will be active for perhaps the next fifty years into the future. (par. 23)

The Board agrees with the Town in its interpretation of the meaning that underlies the Clergy principle. On its face, Clergy appears to stand for the proposition that an application should be judged by the policies that exist at the time that the application is filed. But more deeply, as the court acknowledged in its reasoning, the case stands for the proposition that the Board has the authority to formulate a procedural policy such as the Clergy principle and that it is uniquely equipped to judge those circumstances in which it is appropriate to apply it and, by corollary, when it is appropriate to set it aside. (par. 42)

To conclude otherwise is to require that current practices and policies, no matter how reasonable, must be ignored or given so little weight as to be made virtually trivial, in all cases where the date of the application precedes them. This would amount in some cases to a willful blindness that would prevent the decision-maker when determining the merits of an application - even where it is reasonable to do so - to apply criteria, standards and tests that are based on the most current research and information. (par. 45)

The Board considers it appropriate and necessary that the application should satisfy the most recent available policies and the best standards of planning and environmental management. This approach maintains a proper regard for the Provincial Interest as

⁵⁹ *James Dick Construction Ltd v Caledon (Town)*, [2003] OMBD No 1195 - LOBA & LBHF Book of Authorities, Tab 8, PDF page 123, 125-127

expressed in Section 2 of the Planning Act and represents the best expression of the public's interest in good planning principles and sound planning practice. (par. 54)

For these reasons, the Board allows the motion and rules that the policies of Official Plan Amendment 161 to the Town of Caledon Official Plan are not only admissible and relevant but that they should be made to apply in this case and that the planning merits of the Rockfort application by James Dick Construction Ltd. should be evaluated on the basis of OPA 161 policies as a District Official Plan and approved by this Board. (par. 55)

143. In my respectful submission, if the application were to have been made slightly later, an amendment to the District Official Plan would have been necessary.

144. In the same way that the developer says: “I applied before the new District Official Plan specifically designated Langmaid’s Island as a Muskoka Heritage Area” we know that the new District Official Plan policy designated Langmaid’s Island was a District Official Plan and approved with full knowledge of the LIC applications. The District must be deemed to have been aware of the proposal to minimize the heritage values and, in the face of that, acknowledged and embedded the heritage values my clients and the Township say must be protected.

145. It is fair and prudent for the Tribunal to consider the elevated status given to Langmaid’s Island in the new District Official Plan.

THE SUBDIVISION DOES NOT CONFORM WITH THE LAKE OF BAYS OFFICIAL PLAN

146. In assessing the subdivisions conformity to the Township Official Plan⁶⁰, Mr. Fahner started with the Plan’s Objectives, referencing Objective B.2⁶¹, “To conserve the rich landscape of lakes, forests and wetlands, and safeguard the health and integrity of the water, air, forests, shorelines and natural habitat” and Objective B.3⁶², “To preserve the natural panorama and settings of the land and lakes”.

147. It was Mr. Fahner’s opinion that there is a difference between a requirement to “conserve” and the requirement to “preserve”. To conserve is to reduce the use of natural resources and use them more efficiently. As applied to landscapes, conserving means you can have development but have tools to mitigate affects, while to preserve is protecting the landscape in its current state.

⁶⁰ Exhibit 1, Tab 5 Township of Lake of Bays Official Plan (Extracts)

⁶¹ *Supra*, PDF page 125 of 391

⁶² *Ibid*, PDF page 125 of 391

From his experience at the Upper Thames River Conservation Authority, Mr. Fahner is accustomed to applying this distinction and believes that preserve is a stronger, more protective term; to preserve the natural panorama of Langmaid's Island from the lake means to protect its current state.

148. Similarly, Township Official Plan Policy B.10⁶³ introduces the requirement, "To conserve the waterfront as a valuable resource and accommodate development which respects the basic character and traditional mix of uses, and maintains the natural and aesthetic qualities of the area".

149. Township Official Plan Policy B.12⁶⁴ establishes the objective, "To preserve the cultural heritage of the Township, including historic areas, building and sites, landmarks and landscapes, and archaeological remains, for its cultural, historical and economic value and contribution to the community's sense of identity".

150. In his evidence, Mr. Fahner drew the Tribunal's attention to the use of the verb "preserve" in Policy B.12, noting that Langmaid's Island is identified as a landmark and opining that B.12 would require its preservation, or maintenance in its current state; an important choice of words.

151. Section C of the Township Official Plan provides the "Strategy for Growth"⁶⁵. Policy C.3 a)⁶⁶ states, "The principles which will guide growth include: a) the integrity of the natural environment and landscape will be maintained". It was Mr. Fahner's evidence that to "maintain" could also mean "preserve".

152. Township Official Plan Policy C.3 b) directs that, "aesthetic values and scenic areas should be preserved".

153. Township Official Plan Policy C.6 requires that the particular character and values of each designation will be preserved and enhanced.

154. Mr. Fahner took the Tribunal to the policy's direction that "character" is established over time and is rooted in: physical setting and landscape characteristics including the unique confluence of water, rocks and trees and scenic landscapes; historic development patterns; open space, natural areas and recreational areas.

⁶³ *Ibid*, PDF page 126 of 391

⁶⁴ *Ibid*, PDF page 126 of 391

⁶⁵ *Ibid*, PDF page 128 of 391

⁶⁶ *Ibid*, PDF page 128 of 391

155. He noted that, in looking at character, it is a relationship between built form and natural heritage, but that, in this case, we have a “vacant” island. Mr. Fahner described the stretch of Langmaid’s Island shoreline as huge and agreed with Dr. Coleman’s evidence that the undisturbed shoreline is more valuable as such shorelines are less and less to be found.

156. It was Mr. Fahner’s evidence that every lake is a little different and that the property fabric in this area along the shore is dense cottage development, noting that because South Portage Road is so close to the water’s edge, it pushed development towards the lake, an uncommon circumstance. The lots to the southwest of 3933 South Portage Road range in depth from 75 feet to 110 feet, the point being that the development here is certainly not typical of the rest of the lot pattern on the lake.

157. Looking southwest to Prices Point to the next bay shows a much different pattern; with frontages of 1,320 feet and 2,000 to 2,500 feet. The area opposite Langmaid’s Island just happens to be an area of concentration and represents a poor example for comparison purposes. It was Mr. Fahner’s evidence that he would not want to see this density of development replicated.

158. Township Official Plan Policy C. 7⁶⁷ provides that: “The character of a community or the rural and waterfront designations is not static, but rather evolves over time, adapting to new circumstances. Development will be managed to ensure that the essence and fundamental features of the designation are maintained. As the area grows, development, which is compatible with and complements this character should be fostered”.

159. In applying Policy C. 7, it was Mr. Fahner’s evidence that the island must be taken into account. There is approximately 6,100 metres (over six kilometres) of undisturbed waterfront that needs to be considered in the characterization of the character of the community.

160. Character of the area must include Langmaid’s Island itself. The photos submitted to the Tribunal from the appellant’s planners only showed individual cottage structures. There was no indication of the entire frontage of the lots.

161. Photos submitted on behalf of the Lake of Bays Association and Lake of Bays Heritage Foundation showed representative shoreline (Price’s Point) and the undisturbed shoreline of Langmaid’s Island. If the undisturbed shoreline was stretched over the mainland shoreline it would

⁶⁷ *Ibid*, PDF page 130 of 391

cover more than the area in the immediate area. Being an island, it does not have the same impact as you do not see all of the frontage at the same time.

162. The photo taken of the south side of Langmaid's Island shows a frontage of 800 metres where six boathouses would be located. By turning to the left and showing the westerly 800 metres of the island on the south shore, up to 11 boathouses will be visible. The proponent has not provided a visual analysis of the impact of multiple boathouses along the shoreline of Langmaid's Island.

163. With Langmaid's Island being a Natural Heritage Area, care must be taken in considering the impact on the undisturbed shoreline. The retention of the shoreline in its natural state is a difficult policy to conform to. Due to the ability to remove vegetation in the Shoreline Activity Area, along with limbing and thinning, the shoreline can change dramatically. The sensitivity of this matter in the Natural Heritage Area designation has not been adequately accounted for. The island can also be seen from over two kilometres away.

164. Township Official Plan Policy C.8⁶⁸ requires that, "Growth will generally be directed to areas of waterfront, rural and community settlement; while the areas of remote, relatively undeveloped land without appropriate public road access should be preserved for conservation, resource-based uses, and recreational activities such as hiking, canoeing, hunting, trapping, or fishing". As an island, without road access, Mr. Fahner felt that C.8 could be applicable.

165. Mr. Fahner took the Tribunal through his photographs.⁶⁹ It was his evidence that Photo 2 – "Langmaid's Island South Side Eastern Portion Looking North" was taken from a point about 700 metres from shore. It illustrates the hills; the open rock areas close to shore and defines part of the character of the area.

166. Photo 3 shows the beach, which according to Mr. Fahner is not common to the lake. In his opinion, this is a unique feature. The picture shows the undisturbed shoreline. Photo 4 shows the beach to the east and, again, the undisturbed shoreline. Photo 5 shows the existing "disturbed/developed" area. Photo 6 displays the "gap" between Big and Little Langmaid's Island.

⁶⁸ *Ibid*, PDF page 130 of 391

⁶⁹ Exhibit 14

167. Mr. Fahner described Mr. Dymont's photos as simply showing one cottage after another, but not revealing the relationship to neighbouring properties. Mr. Fahner's pictures are taken from further back, showing three, four or five cottages in one shot, to better show the impact.

168. Referring to the photo at page two, Mr. Fahner said that, applying the lot layout for this stretch would reveal six boathouses and corresponding shoreline activity and that a similar stretch to the westerly end of the island would show ten or 11 of the proposed boathouses. While LIC did a visual impact assessment, Mr. Fahner does not believe that it showed how the greater shoreline would be impacted, noting that the island is very recognizable and can be seen from two to three kilometres away.

169. Section D of the Township Official Plan regulates "Environmental and Landscape Conservation".⁷⁰ Policy D. 2 states: "Conservation of the natural environment will take precedence over development when the two are in conflict and mitigation measures are unable to protect environmentally sensitive or significant natural heritage features and functions".

170. Mr. Fahner acknowledged that D.2 does afford the opportunity for mitigation measures, but, in his opinion, development or disturbance of important features such as the island's undeveloped and undisturbed shorelines, are very hard to mitigate.

171. Township Official Plan Policy D.3 provides: "The conservation of the overall natural landscape, tree cover and vegetation will be encouraged in an effort to preserve the natural appearance, character and aesthetics of the area and to protect the natural heritage of the Township". Although Mr. Fahner acknowledged that efforts had been made by the developers, they were not enough to satisfy this policy requirement.

172. The Township's protection of "Scenic Sites and Areas" is regulated in Township Official Plan Policy D.7⁷¹: "Important scenic sites as well as the scenic character of road, pedestrian, river and boating routes should be preserved and development should occur in a manner that maintains those scenic values".

173. It was Mr. Fahner's evidence that the route from Baysville to Bigwin to Dorset, including the route around Langmaid's Island, was the kind of scenic route to be preserved under D.7. It was

⁷⁰ Exhibit 1, Tab 5, Township of Lake of Bays Official Plan (Extracts), PDF page 132 of 391

⁷¹ *Ibid*, PDF page 133 of 391

important and uncommon that the Township Official Plan has a specific policy on scenic boat routes.

174. Mr. Fahner noted Township Official Plan Policies D. 9⁷² (Natural Landscape Features), D.10⁷³ (Design with Nature) as important policies. Specifically, D.10 a) requires that built form should not dominate the landscape and D.10 b) says that visual impact should be minimized.

175. Township Official Plan Policy D.16 (Natural Shorelines) states, in part, that: “The preservation and restoration of natural shorelines and shoreline vegetation will be strongly required to: c) maintain shoreline character and appearance; and d) minimize the visual impact of development.” Mr. Fahner opined that the requirement is strongly required, which is a mandatory direction to adhere. It was his observation that the policies were becoming stronger, the further along in the section one goes.

176. The Township’s “Natural Heritage” policies begin with Policy D.67⁷⁴. Policy D.71, “Preservation”, provides as follows: “The features and values, which contribute to the importance of natural heritage areas and sites, will be preserved and those areas will be protected from incompatible uses or activities ...”. Mr. Fahner sees D.71 as a strong policy direction to preserve Langmaid’s Island as a natural heritage area, before even reaching the specific policies for Langmaid’s Island. He opined that, if he were proposing an amendment to the Township Official Plan to allow the subdivision, he would have considered requesting relief from this policy, in addition to the Langmaid’s policies.

177. The impact assessment prepared by the developers does not appear to be to the satisfaction of the Township of Lake of Bays, a requirement of D.74⁷⁵.

178. Similarly, Policy D.75⁷⁶ (“Planning Tools”) requires that “natural heritage areas and sites will be protected through the use of various methods appropriate to the circumstances, including amongst others: a) prohibiting or restricting development through specific Official Plan policy, the development permit system or zoning”.

⁷² *Ibid*

⁷³ *Ibid*

⁷⁴ *Ibid*, PDF page 137/138 of 391

⁷⁵ *Ibid*, PDF page 139 of 391

⁷⁶ *Ibid*

179. And Policy D.76⁷⁷ specifically stipulates that: “The protection of natural heritage areas and sites will be implemented through the Development Permit ...” This is precisely how the protection of Langmaid’s Island has been accomplished – the existing Development Permit By-law restricts the development of Langmaid’s Island to two lots.

180. There are over 20 policies in the Township Official Plan related to the preservation and conserving the landscape and shoreline of the lakes within the Township.

TOWNSHIP OF LAKE OF BAYS OFFICIAL PLAN - LANGMAID’S ISLAND MUSKOKA HERITAGE AREA

181. The introduction to the policies for Langmaid’s Island Muskoka Heritage Area is found at Exhibit 36.⁷⁸

182. Langmaid’s Island has been recognized as a Muskoka Heritage Area, since at least 1994. The developers knew or ought to have known of the protections afforded the island, at the time they purchased it. The Muskoka Heritage Area designation was thoroughly vetted through a public planning process and is deemed to conform to the District Official Plan.

183. The introductory preamble to the Langmaid’s Island Muskoka Heritage Area policies states:

The southern half of Langmaid’s Island is located in the Township of Lake of Bays, with the other half in the Town of Huntsville. This Heritage Area also includes Seagull Island, an associated and small rocky island that functions as a Herring Gull loafing area.

Langmaid’s Island is valued for its wide range of topography and natural features as well as the habitat that it offers. Due to the quality and lack of disturbance of the forested communities, the island is considered as a regionally significant forest and was identified as a candidate ANSI. The island supports long stretches of undeveloped shoreline and natural beaches on a lake, which is well developed with recreational properties. For this reason, it is highly valued for its scenic and aesthetic qualities. Although the sandy beaches are frequented by boaters who stop to picnic and swim, they are clean. The island is currently held in single ownership.

⁷⁷ *Ibid*

⁷⁸ Exhibit 36, Township of Lake of Bays Official Plan, PDF page 54 of 97.

184. Contrary to the view of the planners for LIC, preambles play an important role in the interpretation of official plans. To again quote Driedger:

[The] primary function of a preamble is to recite the circumstances and considerations that gave rise to the need for legislation or the “mischief” the legislation is designed to cure. May mention not only facts which the legislature thought were important but also principles or policies which it sought to implement or goals to which it aspired... Preambles are relied on most often to reveal legislative purpose.⁷⁹ ... They may be relied upon to help resolve ambiguity, determine scope or generally understand the meaning and effect of legislative language.⁸⁰

185. As the Tribunal will recall, Mr. Fahner felt it was a useful introduction to and assists in the interpretation of the site-specific policies for Langmaid’s Island: Township Official Plan Policies D.96, D.97, D.98, D.99 and D.100. He noted that the planners for the developer felt it necessary to amend this statement and disagreed with their characterization of their proposed amendments as being to “correct errors” and “provide clarification”. Mr. Fahner felt that the revisions went much further than that.

186. Township Official Plan Policy D.96 identifies the reasons or values why Langmaid’s Island has been identified as a heritage area of regional significance.

D.96 Langmaid’s Island, together with Seagull Island have been identified as a heritage area of regional significance for the following reasons:

a) Langmaid’s Island supports a diversity of habitats including various forest types, rocky shorelines, sandy beach, marshland, steep rocky ridges, exposed cliff faces and semi-open treed barrens;

b) The landscape, shoreline and biotic communities on Langmaid’s Island show little recent disturbance;

⁷⁹ Driedger references this point to *Finlay v. Canada (Minister of Finance)* [1993] 1 S.C.R. 1080 at 1105-06 - LOBA & LBHF Book of Authorities, Tab 4, PDF page 84

⁸⁰ Driedger references *Commission de la Santé & de la sécurité du travail (Que.) v. Bell Canada* [1988] 1 S.C.R. 749 - LOBA & LBHF Book of Authorities, Tab 4, PDF page 85

c) Langmaid's Island was evaluated as a regionally significant forest and recommended as a candidate ANSI; d) Langmaid's Island supports a deer wintering area as well as a potential Lake Trout spawning location;

e) Seagull Island is a nesting area for Canada Geese and functions as a Herring Gull loafing area; and

f) Seagull Island has high scenic value and the hills on Langmaid's' Island offer a commanding and scenic vista of Lake of Bays.

187. Mr. Fahner drew the Tribunal's attention to the value identified at D.96 b), "The landscape, shoreline and biotic communities on Langmaid's Island show little recent disturbance;". He opined that the policy identified the undisturbed nature of the landscape and the shoreline on Langmaid's Island as a value to be preserved and that the proposed subdivision will not preserve this value.

188. Township Official Plan Policy D.98 specifically addresses the creation of new lots on Langmaid's Island.

D.98 Creation of new lots on Langmaid's Island or substantial development will be discouraged in order to retain this as a natural and undisturbed area and retain its important values. Any further development or site alteration on the island should be focused in the area, which has already been disturbed by development.

189. Mr. Fahner explained that D.98 provides direction on the intent of the Langmaid's Island policies in two regards: 1) the creation of new lots or substantial development will be discouraged; and 2) any further development is to be directed to the area where disturbance by development has already occurred.

190. The starting point is, then, that only limited, i.e., non-substantial, development is permitted – to retain Langmaid's Island as a natural and undisturbed area and retain its important values – little recent disturbance to the shoreline – and that, if there is to be further development, it should be focused in the area disturbed by development.

191. Township Official Plan Policy D.99 does contemplate development beyond the existing development site; however, it is subject to a requirement that it can occur in a location and manner that will ensure the preservation of the values in D.96.

D.99 Where further development of the island is proposed beyond the existing development site, an impact assessment will be undertaken in order to better identify, locate and evaluate the values of the area, and to ensure that development can occur in a location and manner which will ensure the preservation of these values.

192. This is a problem with the development before the Tribunal, it is proposed in a location – the shoreline – and in a manner – over-development – that will not ensure the preservation of the values by which Langmaid’s Island was identified as a heritage area of regional significance.

193. It was Mr. Fahner’s evidence that D.99 must be read in a restrictive way to be consistent with D.98 and, although it does not say development is prohibited, he was very clear that, in his professional opinion, a 32-lot subdivision was far and away too much development when considered in the context of the Langmaid’s policies, as well as the general direction of the Township Official Plan to preserve natural heritage features, including landscapes and shorelines. He noted that even another two lots would be a doubling of the existing development.

194. Mr. Fahner also took exception with the evidence that an official plan amendment was not required.

195. Township Official Plan Policy D.100 establishes a condition precedent to development – a demonstration that it is not feasible to preserve the whole island in its natural state. If preservation is not feasible, the policy suggests four methods of protecting the island’s important features.

D.100 Where it is not feasible to preserve the whole island in its natural state, protection of important areas and features of the island that have been identified through impact assessment will be accomplished by:

a) dedication or purchase of the land in favour of the Township, or other appropriate organization; or

b) establishment of a conservation easement; or

c) private land stewardship; and

d) zoning, together with site plan or other agreements or the Development Permit System.

196. Mr. Fahner posed the rhetorical question: Who determines what is feasible? Previous owners obviously found it feasible to retain the island in private ownership and, while

acknowledging that it was a difficult policy to conform to, he did not see the fact that the island was in private ownership as making it impossible to preserve it. The policy exists and needs to be complied with.

197. Moreover, it was Mr. Fahner's evidence that, in fact, the Township had put appropriate measure in place – the restrictions in the Township's Development Permit By-law.

198. Fahner noted that the policy could have been clearer, but feasibility has been demonstrated by the previous owners. I do not understand in reading these policies how 36 lots would be acceptable.

199. It was Mr. Fahner's evidence that D.98 and D.99 are clear; substantial development will be discouraged, and an impact assessment will need to be done for any future limited development. The existing shoreline with little disturbance is to be preserved. The building of 32 boathouses definitely does not do this. Not only are there 32 lots proposed, but each lot is also permitted to have four habitable buildings. Again, it is clear this is not within what is contemplated in this policy.

200. Section D.98 goes on to state "Any further development or site alteration on the island should be focused in the area, which has already been disturbed by development." Mr. Fahner noted that there has been no attempt to design the proposed subdivision in relationship to this policy. The proposed lots, for example, extend along the entire frontage of the north shore of the island.

MELISSA MARKHAM'S EVIDENCE

201. Ms. Markham considered all relevant documents and policies holistically and coherently and decided based on that. It was her opinion that D.98 is to be read with D.99; the island is to be retained as an undisturbed area and the proposed subdivision does not retain these values.

202. Speaking on Policy D.100, Ms. Markham said that she disagreed with Ms. Walker that an appropriate justification for non-feasibility was the fact that it was in private ownership. She noted that these policies have been in the Township Official Plan since 1995. In her opinion, Ms. Walker's reason was not a valid excuse.

203. Ms. Markham testified that she had concerns with the measures proposed to preserve the values identified in D.99; the shoreline and scenic value of the hills. In her opinion, a 32-lot

subdivision would not preserve these values. She did not accept Ms. Walker's view that these values would be preserved or that 98% of the shoreline would be protected. It was her opinion that the shoreline will not be preserved if the applications are approved.

DAN CURRIE'S EVIDENCE

204. In cross-examination, Mr. Currie acknowledged that he had not done a heritage impact assessment on a cottage subdivision in Muskoka.

205. With respect, his evidence in cross-examination that the shoreline was "developed" because of the existing cottage "complex" is simply untenable. The fact is that the existing development accounts for only about 100 metres of an over 6,000 metre shoreline.

206. His evidence was that because there was one cottage on the island, the use of the entire island for another 31 cottages was fine. To Mr. Currie, the impact of a 36 lot (later reduced to 32) subdivision was such that "it could be supported".

207. Mr. Currie spoke about placing the buildings to "take advantage of the topography in part so they can maximize the views of the landscape". He refused to acknowledge the contradiction between creating views out over the lake and, at the same time, protecting the view to the island by screening the buildings; two mutually exclusive concepts.

208. For Mr. Currie it was a mathematical exercise – there would be 23 metres of shoreline activity times 32 lots or about 736 metres with structures so it was just 11% or 12% "disturbed". If "disturbed" means having a normal pattern disrupted or interrupted, broken up, then the shoreline will be disturbed at least 32 times.

209. On Mr. Currie's view that the island has modest design/physical value and that "the island is a large land mass which may serve as a navigation landmark on the Lake of Bays and is therefore considered a landmark to the local community" Mr. Untermans said: *If the island is a "landmark" for the local community, it is of greater value than 'modest'.*⁸¹

210. Commenting on Mr. Currie's finding that the development will have "beneficial impacts", Mr. Unterman observes:

⁸¹ *Ibid*, page 4

The preferred Plan of Subdivision contains thirty-six new lots. The report states it supports the theme of seasonal waterfront and recreational use in the Lake of Bays. The present property contains one former cottage complex. The proposed development will significantly increase the density of the built environment on a landform that has existed with little change in the previous 144 years. It is not clear this can be considered a beneficial impact.

211. On Mr. Currie's observation that there would be "Neutral Impacts", Mr. Unterman said:

The Plan of Subdivision will completely change the historic character context and potentially the natural features which are described as an important aspect of Langmaid's Island as it now exists. The physical impacts will bring loss to the existing cultural heritage environment. The development cannot be considered 'neutral' under this proposed development plan. The proposed development will significantly increase the density of the built environment on a historic landform with has witnessed little change in the previous 144 years.

212. Mr. Unterman had this to say about the report's summary:

The HIA report confirms the opinion that the scenic views of the Lake of Bays will not be obstructed as each lot provides frontage. No information was provided regarding the impacts relating to the silhouetting of new cottage development against the existing natural environment setting that has changed little with the exception of the existing Adamson cottage complex in 144 years.

213. Commenting on the report's recommendations and conclusions, Mr. Unterman says:

This section does not speak to the protection of scenic views other than to mention the "cottage lots will not result in the obstruction of views as each lot provides generous frontages and views of Lake of Bays". The scenic views are an important aspect of Township of Lake of Bays identification of Langmaid's Island as a Muskoka Heritage Area. There should be defined cultural heritage guidance available to help protect this valued characteristic.

214. On September 4, 2019, Mr. Unterman provided a 2nd Peer Review of the heritage impact assessment.⁸² Among other things, Mr. Unterman notes:

There is potential for significant change under the proposed plan that will bring permanent change to the existing character and setting of the built heritage resources and cultural heritage landscape. MHBC have determined the change has been mitigated through sensitive design. When the final design is presented this factor should be assessed to monitor how successful the proposed MHBC approach will be for the new development.

... there is no new insight into the impacts related to the silhouetting of new cottage development against the existing natural environment setting. More information related to context preservation was provided at our May 2018 about site design (sic). This information should be added to the HIA report.

215. He concludes this second peer review by saying: *The revised MHBC HIA (June 2018) contains substantive new information that informs the peer review process and brings clarity to the HIA. However, as noted, there are still information gaps in the document.*

216. In cross-examination by Mr. Ewart, Mr. Currie acknowledged that he never received any comments with respect to the final submission of September 28, 2018 and that at no time did he receive a “sign off” letter from Mr. Unterman. Mr. Currie told me that, because Mr. Unterman did not respond negatively to his final submission that there he was satisfied. This is not, with respect, a ringing endorsement or even a “sign off” by Mr. Unterman.

217. Finally, Mr. Currie acknowledged to me that he had no hand in the site design, the layout of the lots, or the architecture. He handed it over to the planners four years ago.

MICHAEL HANNAY’S EVIDENCE

218. Michael Hannay is, no doubt, an accomplished architect and urban designer. By his own admission, however, he has never done a visual impact assessment of a Muskoka shoreline development. A review of his *curriculum vitae* confirms the urban focus of his practice.

219. In cross-examinations, Mr. Hannay admitted:

a) The boathouses will be fully visible;

⁸² Exhibit 20, Second Peer Review Comments – Unterman, Sept 4, 2018

- b) Anything attached to them would also be visible;
- c) Boats, water inflatables were not considered in his visual impact analysis;
- d) Vegetation is a major factor in visual impact;
- e) The three sleeping cabins were not included in this analysis;
- f) His entire premise was that you won't see the "magenta boxes" because of the tree cover;
- g) The tree visuals were based on a random algorithm, which did not recognize shorter trees at the shore and were at a lower stem count which would mean the trees would be denser and consequently shorter;
- h) The shoreline activity area would only have selective pruning and when informed that the trees could be cut down, he admitted that it would dramatically change the simulations;
- i) There was a "tipping point"; and
- j) If an owner were to remove "a lot" of the trees from the shoreline activity area he would no longer be able to say that the visual impact was negligible.

220. It is also, in my respectful submission, important to note that Mr. Hannay did not have one shot of the full shoreline; no long views into the island, which is, of course, one of the primary values of Langmaid's Island.

221. Mr. Hannay agreed with me that he relies entirely on the trees to hide the cottages and that without them there would be an impact.

DEBRA WALKER'S EVIDENCE

222. Although Ms. Walker worked as a planner in Muskoka, that was over 20 years ago. She has never conducted a planning analysis for a proponent of a waterfront development in Muskoka.

223. She agreed that the District Official Plan Policy F.114 was the District's policy providing the direct to the Township to recognize heritage areas. Surprisingly, she would not agree that it was the island's undeveloped nature that was cause for the protections. She dismissed the importance of the Preamble as a background statement, provided for information only. She felt it was "unclear". This is a rather untenable comment, particularly when she next went back to the "actual source". When I pressed her on whether the undeveloped shoreline was or was not one of

the values, she said “I am not one to say, I have not done an evaluation”. An honest response but would seem to undermine her testimony on the interpretation of the applicable policies and certainly her evidence that it was good planning to repeal Township Official Plan Policy D.98.

224. When I cross-examined Ms. Walker on D.96 and the reference to landscapes and shorelines, she said that the shoreline was a value but that it was the biotic part of the undisturbed shoreline that was important, not what it looks like. She would not agree that the shoreline should be considered independently of the “landscape” and “biotic communities”. The grammar simply does not support this position.

D.96 b) The landscape, shoreline and biotic communities on Langmaid’s Island show little recent disturbance.

225. She believes that there were “lots of areas” with undeveloped shoreline and this six kilometre stretch was “not unusual”. This is completely contrary to the source she had referred to which says Langmaid’s Island is important, because it is uniquely undeveloped.

226. Ms. Walker said they “removed” D. 98 based on their impact assessment. But D.98 does not speak to impact assessments. It is the policy that discourages new lots or substantial development and directs any further development or even site alteration to the area already disturbed by development. D.98 has nothing to do with an assessing – it takes the natural and undisturbed nature of the island as a given and says where development can go. Clearly a policy that is fatal to this application and had to be repealed.

227. When I asked her about the accessory structures in the Shoreline Activity Area – sauna, hot tub, stairs, elevator or lift – she thought that the Development Permit By-law the developers were proposing would “likely restrict some of this where there is vegetation”. We know, of course, that this is not correct. In fact, the vegetation can be removed to make room for these buildings and structures along the shoreline. A planner opining as to the impact of a subdivision on an undisturbed shoreline should know what can and cannot happen in the Shoreline Protection Area.

228. Ms. Walker admitted to Mr. Ewart that the developers could preserve the island if they so choose. She told me that “it is not feasible” because it had been purchased.

229. She agreed with my suggestion that the thrust of her evidence was that the subdivision was going to “fit in” and that it would be similar to the character of the existing development and

compatible – maybe even better. But, with respect, this misses the point. We wouldn't be here, they wouldn't be asking to repeal large chunks of the Township's Official Plan policies for Langmaid's Island policies, and there would be no need for visual impact experts and cultural heritage experts if all we wanted to do was make it the same as the other shore.

IMPACTS ON THE SOUTH PORTAGE ROAD COMMUNITY

230. Section "H" of the Township Official Plan, "Waterfront", describes the shoreline communities located around the lakes or along the significant rivers in the Township.

231. Township Official Plan Policy H.27 provides direction for the development of water access lots.

Development of shoreline lots with only water access including islands will be permitted where:

- a) road access is not available;*
- b) road access cannot be provided by way of an extension from an existing road in the vicinity;*
- c) adequate private or commercial docking and parking facilities are secured on the mainland to the satisfaction of the Township; and*
- d) in the case of a resort commercial use, the parcel on which such mainland facilities are located fronts on and is accessible from a year-round maintained, public road.*

232. Mr. Fahner noted H.27 as an important policy that needs to be addressed. In particular, the requirement in H.27 c) that adequate private or commercial docking and parking are secured to the satisfaction of the Township. He felt that, even though You need to have regard for this even though parking landing is in a different municipality. Obligation to do that.

233. Section 8.4.6 of the Huntsville Official Plan establishes the policies for waterfront landings in the Town of Huntsville.

Waterfront landings and individual access points may be permitted or expanded provided the following matters are addressed:

- a) the property has adequate area and frontage to accommodate the facility;*
- b) sufficient docking and parking facilities will be provided to serve the use;*
- c) the property, particularly the shoreline, is suitable for the use;*

- d) access to and from the facility by both water and land is suitable;*
- e) the facility will not have a negative impact on environmental sensitive areas, habitat, or heritage areas;*
- f) the facility is designed in a manner that is compatible with abutting properties;*
- g) parking facilities will be setback at least 20 metres (66 feet) from the shoreline and a natural vegetative buffer is maintained within the setback area;*
- h) storm water management and construction mitigation is addressed;*
- i) approval will be subject to a zoning amendment and site plan agreement;*
- j) they are secured through ownership or by a registered right-of-way or condominium approval;*
- k) generous side yards shall be maintained to provide for screening and buffering of neighbouring residential properties.*

234. It was Mr. Fahner's evidence that the waterfront landing at 3933 South Portage Road is deficient and does not conform to the Official Plan for the following reasons:

- a. The side yard setbacks have not been increased from the standard for a Shoreline Residential (SR1) zone. The Official Plan in Section 8.4.6 states there are to be generous setbacks. This policy does not exist in the Waterfront Residential section of the Official Plan. Given the provision in the Official Plan, an appropriate side yard setback would be 40 ft.
- b. The parking area still uses tandem parking spaces. Mr. Fahner stated that the Town of Huntsville Zoning Bylaw also applies to the large urban area of Huntsville where tandem parking in a residential driveway makes sense. There are ingress and egress issues with this arrangement. This has also been noted by the Town Planner.
- c. The entrance has been installed towards the centre of the property, not where it is shown on the Concept Plan. This will impact the configuration.

235. Section 8.4.8 of the Huntsville Official Plan provides that: "In general, the size of the waterfront landing and the number of properties it serves will depend on the suitability of the site and its impact on the abutting properties." It was Mr. Fahner's opinion that the proposal for 3933 South Portage Road does not conform to this policy.

236. Water depth information has not been provided by the proponent and yet the water depth issue had been identified by the Town. Mr. Fahner provided the only water depth information by stating that the water level in Lake of Bays had been increased at the dam in Baysville by a depth of 3.6 feet. The area between the original water's edge and the present water's edge is, therefore, 3.6 feet, an extremely shall water level in the slips close to shore.

237. Moreover, on the proposed docking arrangement at 3933 South Portage Road, Mr. Fahner pointed out that every time two of the slips are accessed by boat, they will cross the neighbouring lot line, which is not good planning. He was clear that the whole scheme was not good planning. There were simply too many parking spots and docking slips for the small site.

238. In Mr. Fahner's opinion the proposed waterfront landing at 3933 does not conform with the Huntsville Official Plan.

239. The proposed Waterfront Landing at 3933 South Portage Road is not in conformity with the Official Plan, is not compatible with the neighbouring properties due to the intensity of use and does not represent good planning.

240. Mr. Fahner stated that the addition of the waterfront landing function at 4215 South Portage Road would undermine the viability of the current tourist commercial use and would preclude the potential for expansion. He did not feel that the waterfront landing/parking use would co-exist well with the tourist commercial use.

241. 3933 is currently zoned Shore Residential 1 (SR1) and there are family dwellings on the lots on either side of the property. Ms. Maxwell found it important to point out that setbacks would greatly limit any building on site. It was Ms. Maxwell's opinion that it was not fully demonstrated that the 3933 lot would have any as of right development as it stands.

242. 4215 is currently zoned Shoreline Commercial 1 (CS1). The tourist establishment has housekeeping cabins, sheds and docks. Ms. Maxwell does not believe additional uses on the 4215 property are allowed as of right, either.

KIRSTIN MAXWELL'S EVIDENCE

243. For both properties, Ms. Maxwell's concerns relate to use, compatibility, and character. Ms. Maxwell took the Tribunal to s. 8.2.14 of the Town Official Plan explaining lots in this area are primarily residential with a variety of lot sizes. She also spoke to the Shoreline Activity Area

policy 8.3.4 and demonstrated how the requirements for vegetative buffers in policy s.8.3.8⁸³ would not be met, as the lot frontages are not large and do not provide an appropriate buffer. It is Ms. Maxwell's opinion that the proposals of the landings do not appear to be in harmony or maintain the character of the area.

244. The current use for 4215 is as a tourist establishment. The establishment, known as "Still Bay" is the only tourist establishment along that specific shoreline. Ms. Maxwell points to the Town OP and how preserving quality tourist land bases are essential and non-tourist development along the water would not generally be supported. It was Mr. Szczerbak's opinion that the lands at the 4215 property are under-utilized. The proponents are suggesting the addition of a parking area, a dock for a shuttle, and a second dock for temporary docking. It was Ms. Maxwell's response that the property is typical for a small family run tourist establishment, and there is space on the property for the tourists to enjoy. It is her opinion that the proposal on the 4215 property could inhibit the tourist use and prevent future growth on the property.

245. In Ms. Maxwell's analysis of compatibility for the property at 4215, she also took the Tribunal to s. 8.4.6 of the Town Official Plan⁸⁴. It is Ms. Maxwell's understanding that the proposal does not conform with policies 8.4.6 b), f) and k). Specifically, Ms. Maxwell was concerned that concept plan is missing the required turn radius and area for trailers, the access lane to the shoreline seems to be single laned and interfere with the tourist cottages, the resort shoreline space is used for a shuttle and docking, and that there is a lack of buffering between resort use and proposed use.

246. Ms. Maxwell also believed the proposal for 3933 did not meet the tests of s. 8.4.6, specifically subsections b), f), g), and k). Ms. Maxwell stated that the use of a parcel as a landing depends not just on the size but the location and abutting properties. Ms. Maxwell has concerns on functionality relating to the tandem parking spaces, and no accommodation for boat trailers and turn-around space. She also believes the concept plan does not provide generous buffering as required in 8.4.6 k). Mr. Szczerbak suggested that there would be less impact to the 3933 property as proposed than there would be if it was developed regularly. Ms. Maxwell responded that a regular development would not have 10 boat slips.

⁸³ Exhibit 47, PDF page 8-9

⁸⁴ Exhibit 47, PDF page 10

PARKING

247. The Town of Huntsville Zoning Bylaw has a minimum requirement of two parking spaces per dwelling in a residential zone (regardless of location). The Township of Lake of Bays requires 3.3 parking spaces for a Waterfront Landing and two spaces for every dwelling, plus one space for a sleeping cabin for dwellings on land which are road access (Section 4.59 of the Development Permit Bylaw). The Township requires 3.3 spaces for a Waterfront Landing. The proponent is proposing 2.33 spaces per dwelling.

248. In Mr. Fahner's opinion, the parking requirements should be 3.3 spaces per lot, for the following reasons:

- a. The parking requirements for the Town of Huntsville is based on one dwelling and one sleeping cabin per lot;
- b. The Township of Lake of Bays has considered sleeping cabins in their parking requirements and it does have an impact on parking (Section 4.59). This proposal is for one dwelling and three sleeping cabins.
- c. If the land standard was used, the parking requirement would be four spaces per lot or 128 spaces.
- d. The Township has had experience with waterfront landings, especially with Bigwin Island.
- e. The example of having 12 people on the cottage property was very accurate and they would not have all come in two cars.
- f. Sleeping cabins lead to more intensity of use of the property as they are generally more desirable than having an addition to the cottage. Examples were presented to the Tribunal.

249. The Tribunal will remember Mr. Fahner's testimony that while he had thought that the proposed landing at 3933 South Portage Road could support four lots, after a further review of the proposed "concept plan" and the front and side yard requirements, the required road widening and the reasonable application of a minimum of 3.3 parking spaces per lot, he reduced his estimate even further and felt that only two lots could be accommodated.

250. At 4215 South Portage Road, Mr. Fahner was concerned about overflow parking. If 3933 is overflowing cars will go to 4215, Mr. Fahner opined that if 4215 became full, cars would overflow onto the road.

251. Using 3.3 parking spaces for each lot requires a total of 105 car parking spaces. Mr. Fahner stated that the proponent is providing 75 spaces for the proposed island subdivision, resulting in a shortfall of 30 spaces, in his opinion.

THE ZONING BY-LAW AMENDMENTS

252. Overall, Mr. Fahner felt that the proposed zoning bylaw amendment for 3933 South Portage Road was deficient, and it does not attach a Schedule II to the Zoning Bylaw. There are no limitations in the proposed zoning bylaw on the number of parking spaces, the location of the parking area, and only the amendment for 3933 provides a maximum number of boat slips.

253. Mr. Fahner identified a real concern in that, on the one hand, the developers rely upon the “Shoreline Residential” provisions in the zoning by-law for the land portion of the application, while, at the same time, proposing an exemption to the same zoning by-law to allow the same frontage coverage provisions for shoreline structures as apply in a “Shoreline Commercial” zone.

254. Mr. Fahner stated he was confused by Mr. Szczerbak’s opinion that by leaving the zoning on 3933 it was making it more compatible. Mr. Fahner opined that it would be more appropriate to re-zone the property at 3933 as it was proposing to provide for an exemption, and more provisions would be necessary to create a “Waterfront Landing Zone”.

255. Ms. Maxwell also reviewed the draft zoning by-law amendments for the Tribunal. It was here that Ms. Maxwell noted the additional three-meter road widening that was required and not shown on the concept plans. Starting with 3933, Mr. Szczerbak’s evidence and draft ZBLA showed that the landing at 3933 could be developed without a zoning change, with no exemptions except the “notwithstanding 3.1.18.5” to expand the shoreline structure width from 25% to 33% as found in the CS1 zone.

256. Ms. Maxwell’s evidence referred to the Town’s Comprehensive Zoning By-law s. 4 and specifically s. 4.2.6⁸⁵ where she explained the requirements for aisle width, parking space length, buffer depth. Ms. Maxwell also noted that on Mr. Szczerbak’s concept plan, the edge of the

⁸⁵ Exhibit 34, PDF page 66

proposed gazebo to the edge of the dock currently exceeded the 33% width as proposed in the draft ZBLA.

257. Ms. Maxwell also noted that the property at 4215 would need to conform with the policies under section 4 of the Town's Zoning By-law relating to aisle width and parking stall spaces. Ms. Maxwell was also concerned that the proposed docking took away from the activity space of the tourist establishment and that additional exceptions appeared to be required on this property.

258. Ultimately, Ms. Maxwell was concerned with the overall appropriateness of the proposed uses on the two sites. It is Ms. Maxwell's evidence that her staff report was informed with legislation, the Town's Official Plan and the Comprehensive Zoning By-law and does not find the proposed ZBLAs to be appropriate for the development of the lands.⁸⁶

259. The two proposed landings sites do not conform with the policies of the Huntsville Official Plan, cannot accommodate the necessary parking and docking required for 32 lots, and will have unacceptable negative impacts on the neighbouring properties, pedestrian and vehicular traffic on South Portage Road and create unsafe conditions.

THREE SLEEPING CABINS ON A LOT

260. Mr. Fahner has a number of concerns with the proposed three cabin plan:

- a. The floor area of two of these cabins likely exceeds the minimum floor area for a dwelling thereby permitting what is tantamount to another dwelling on the property;
- b. With a third sleeping cabin permitted on the property this, in essence, equates to the doubling of the number of lots on the island;
- c. Sleeping cabins add increased utility to the property and intensity of use;
- d. There could be four families on the property instead of two; and
- e. The water access facilities have not been properly sized to take this into account.

261. Mr. Fahner opined that, in his experience, separate sleeping cabins are preferred for extended families over a larger dwelling. These added habitable buildings will increase the intensity of use of the properties and along with it a greater impact on the island environment.

⁸⁶ Witness Statement/Staff Report of Kristin Maxwell, Exhibit 7

262. Further, he was not in agreement that a sleeping cabin is the same as adding bedrooms to a dwelling. His view is that people appreciate the additional space and separation. This would also make for an excellent building layout for an Airbnb.

263. In speaking to the definition of “habitable” Mr. Fahner was directed to the definition in the Huntsville Zoning By-law which reads “*habitable means enclosed space that is improved or conditioned for human comfort, and includes areas designed for living, sleeping, eating or food preparation by humans*”.⁸⁷ Mr. Fahner opined that a sleeping cabin would fit under this definition and drew attention to the use of the word “or” that was used in the language.

264. Furthermore, Mr. Fahner explained to the Tribunal the nature of sleeping cabins as an accessory use and how it would be easy to satisfy the “no kitchen” aspect of the definition but to still have microwaves, hotplates, barbeques and other small kitchen appliances that would make them habitable. Mr. Fahner also references the potential 581 square footage of these sleeping cabins compared to boutique apartments at 410 square feet.

265. On this suggestion, Mr. Fahner stated that the total number of habitable buildings proposed would be 128, whereas a standard proposal with one dwelling and one sleeping cabin per lot would be only 64 habitable buildings.

BOATING IMPACT - GORD NIELSEN’S EVIDENCE

266. In stating the results of the Boating Impact Analysis to the Tribunal, Mr. Nielsen showed that on average, Whiskey Bay was overcapacity 22% of the time, and the Narrows were overcapacity 15% of the time. It was Mr. Nielsen’s evidence that with the addition of 32 lots, the average number of trips in Whiskey Bay would see an increase of 47%. The Narrows would see an average increase of 29%⁸⁸.

267. It was Mr. Nielsen’s evidence that on Whiskey Bay, one slow boat and one fast or two boats pulling tubes would qualify as overcapacity. In the Narrows, one fast moving boat would result in the area being more than twice its capacity.

⁸⁷ Exhibit 34 - Town of Huntsville Zoning By-Law 2008, s. 2.72

⁸⁸ *Ibid*, PDF page 69

268. When asking Mr. Nielsen to clarify whether “overcapacity” translated to “dangerous”, Mr. Nielsen opined that overcapacity does not translate to mean that there are safety issues, but that overcapacity is used as a flagging tool in the BIA. He does not, however, raise that flag.

269. Mr. Nielsen further stated that two boats travelling in the middle of the night were just as likely to collide. Using an example of such an event that occurred on Lake Joseph in 2019. When asked to expand on the chances of a collision where congestion is heightened, Mr. Nielsen simply stated that there are many factors that contribute to accidents, such as negligent behaviour. He explained that a BIA is conducted in terms of evaluating enjoyable experiences and reducing negative experiences.

270. When asked if there was then a level “above” overcapacity where safety does become a concern, Mr. Nielsen responded that overcapacity is the measure that is used. He reiterated that on a busy weekend afternoon there were a few overcapacity situations in the small areas surrounding the subject property.

271. Ultimately, Mr. Nielsen did agree that there is a possible relationship between number of boats in an area and safety, and danger could arise in a small lake if people were not careful in areas of congestion.

272. In the end, in my respectful submission, the BIA is of no assistance to the Tribunal.

STEFAN SZCZERBAK’S EVIDENCE

273. Mr. Szczerbak believes that the two proposed landings are capable of coexisting in harmony with the surrounding area, however, he had little knowledge of the adjacent properties and when asked if there were similar waterfront landings with 10 slips on any other lot in the immediate area, Mr. Szczerbak stated that he did not do an assessment in the area and was unable to provide any information. Mr. Szczerbak was also unaware of the distances or lot configurations of the abutting properties.

274. In his evidence, Mr. Szczerbak referenced the concept plans for both 3933 and 4215 to demonstrate the compatibility of the proposed parking areas, explain that the configuration was utilizing existing permissions defined in the Huntsville by-law regarding tandem spaces and parking lengths.

275. The Tribunal will recall it was the evidence of Mr. Fahner and Ms. Maxwell that tandem spaces may not be appropriate in this location and that there was a discrepancy in aisle widths, stall lengths, vegetative buffers and road widening.

276. These concept plans were subsequently revised twice after their introduction by Mr. Szczerbak. The second revision corrected the “minimum front yard setback” reference.

277. The Tribunal requested clarification regarding the permitted accessory structures that accompany a waterfront landing. Mr. Szczerbak suggested that if this was “too open-ended” that it could be limited to just the dock and the gazebo. The same suggestion was made by Mr. Szczerbak regarding the suggested 6m setback and buffering along the sideyard. There has been no such change in either of the revised zoning by-law amendments.⁸⁹

THE PARTICIPANTS’ EVIDENCE

BRUCE CREIGHTON

We have witnessed collisions and many near-misses with current levels of boat traffic. There are numerous dead-heads and logs along the shoreline that further constrict the opening in the Narrows. It is abundantly clear to any observer that a shuttle service through the Narrows is very inappropriate.

We noted that the LOB OP Sections D95-D100 sets out the reasons for the designation and the limitations for development. The LIC applicants would have known, or ought to have known, that a proposal of this nature would be completely incongruous with the intentions and limitations of the designation. The island was for sale for a long time, and ultimately sold at approximately half of the listed price, in large part because the Heritage designation limits its development.

The Narrows is home to at least 2 large turtles and we have witnessed them mating at the shoreline and near our dock. (That is quite an experience!) The turtles have been seen for several summers in recent years and we have witnessed ducks being caught by the turtles.”

In conclusion, it is a source of pride in our community that planners had the foresight to contemplate increased density and set aside a few areas on Lake of Bays to be protected.

We appeal to the Tribunal to uphold this vision. The LIC application is not consistent with

⁸⁹ Exhibits 39 and 73

the values of the area, its shuttle and boat operations will pose significant safety risks and its attempts to disregard good land use planning principles should not be rewarded. Langmaid's Island is a gem and should continue to be protected for the benefit of all.

ED POLLEN

It is clear that significant portions of the island have exposed cliffs, steep rock ridges and steep treed slopes. These can be easily seen as one passes by the island and particularly around the 3 "peaks" of the main domes of the eastern, middle and western parts of the island.

It is our view that the density of cottages and the resultant required tree clearing to allow for development would greatly impact the visual characteristics of the island. Upholding the values of the Significant Heritage Area designation would entail that the island would remain, as much as possible, in its natural state. The proposed development of 32 lots with the issues the slope creates for building site and septic field location and the extent of tree clearing for the construction of up to 3 buildings, septic area, boat house and related walkways would result in significant scarring of the landscape which is not consistent with the values outline in the Official Plan.

Langmaid's Island is unique in its basically undeveloped state. The Significant Heritage Area designation is reflective of that and the views of the citizens who supported it, the family who owned the island for decades, and elected representatives who originally put the designation and policies in place. The cumulative impacts on the values and character of Langmaid's Island by the proposed development are far reaching from potential harm to fish habitats, shoreline development, effluent run off, potential degrading of lake water quality, excessive tree removal and destruction of the vistas the island is so well known for by all those who travel on the lake. It is critical to examine this development proposal as a whole rather than the sum of the parts where approvals for some of the issues discussed come in stages.

The development proposal is clearly in conflict with the nature of an island deemed to be a Significant Heritage Area and we believe the application should be denied. The Township of Lake of Bays Official Plan as well as the 2014 Provincial Policy Statement have the

policies in place to ensure the landscape of this island is not only preserved but also protected.

THE BERGENSTOCKS

The plans to develop a large scale parking lot and waterfront landing abutting Still Bay certainly will permanently scar and disrupt the historically residential community,

We understand that others deserve a chance to enjoy the unique aspect of Muskoka, but does this mean compromising the enjoyment of others and destroying the natural environment with over development The Boating Impact Assessment states that waterfront landings may be permitted by Huntsville's Official Plan providing the facility is designed in a manner that is compatible with abutting properties. This seriously begs the question how a large parking lot, waterfront landing, and a ferry service is compatible with the abutting properties, let alone the entire vista of Still Bay. The comments in the Boating Impact Assessment suggest this is comparable to the Norway Point access point to Bigwin Island. We would disagree with this as Bigwin Island and the associated lake channel traversed is on a completely different scale than the enclosed nature of Still Bay. Bigwin Island was developed long before Still Bay assumed its current scenic character. We also do not feel the comparison with Norway Point waterfront landing is a valid one as that landing ferry service crosses a major wide waterway of the lake in a perpendicular direction while Still Bay is significantly smaller, is more enclosed, and the ferry direction likely will traverse diagonally across the bay. Given the small size of the bay, this undoubtedly will have a significant negative effect on the enjoyment by the current bay residents and the guests of the rental cottages on the 4215 South Portage Road property, who often canoe, kayak, paddle-board, swim, use personal water craft, and water ski into the middle of the bay. Despite the BIA assurances to the contrary, we feel this increased boat traffic will represent a safety issue as well. We have observed multiple poor boating maneuvers through the years, especially when starting or returning to the bay with water skiers and wake boarders, while canoers and kayakers attempt to navigate the bay as well. The increased boat traffic will only add to these potential dangers. The BIA seems to imply that bad and dangerous boating behavior can be avoided by educating and appealing to boaters to modify their boating habits such as slowing down. This is undoubtedly

unrealistic, unenforceable, and Huntsville Official Planelessly optimistic. Where is the data that suggests this has worked in the past. Are swimmers and users of non-motorized crafts obliged to give up enjoyment of these activities. They are assumed to have the right-of-way but from our own personal experiences they are often ignored and the increased boat traffic will pose a significant risk.

The various planning experts indicate any plan should take into consideration the enjoyment of the surrounding neighbors and community. We fail to imagine how this development plan providing for large area for greater than 100 parking spaces, garbage and recycling disposal area for greater than 25 family units, and a waterfront landing and ferry service with frequent boat and human activity in a long standing residential area is consistent with the natural beauty of the lake and Still Bay in particular. It certainly will not add to the enjoyment of the long standing residents. On the contrary, we predict a significant negative visual impact despite what the expert studies indicate. Langmaid's has been a fixture in our memories for over 50 years. We believe it should remain as it is, a unique landmark and historical jewel in the midst of the Lake of Bays.

Many people enjoy walking, running, and biking on South Portage Road which under current traffic patterns is at times problematic given the numerous hills and curves. Although the traffic report indicates South Portage Road is able to handle the anticipated increased traffic, we feel the significant increase in traffic with trailers/boats at the proposed waterfront landing sites will increase the risk for these walkers, runners, and bikers. Despite the posted speed limit it is rarely observed (surprise!)

THE WEDGEWOODS

My family and I have been on Lake of Bays for over 30 years. We reside at 3958 South Portage Road directly facing the Northern side of the Island. This is our permanent year-round residence. The families along South Portage road comprise a small community of modestly to small sized homes and seasonal cottages built on the waterfront.

There are two cottages between our home and the property at 3933 South Portage Road which is proposed to be turned into a waterfront landing with an oversized dock large enough to accommodate 10 boats and space for 20 cars. Note that the proposed parking lot property is also located on a blind curve.

Our home is directly on the waterfront. We obtain our drinking water from the Lake and use the Lake for water activities. We have a young granddaughter that spends much of the summer with us. We have concerns for her safety.

It has always been our understanding that Langmaid's Island is a Heritage landmark and as such is protected from development and abuse.

Recently, the island was purchased by new owners with the intent to develop the island with 32 dwellings and associated sleeping cabins which will also require docks and parking facilities on the mainland to provide a mainland access point. The Heritage designation was in place prior to the purchase of the Island by the new owners so they should have understood the restrictions on development.

We are opposed to the subdivision and development of these properties on the Island.

Our concerns are as follows:

The removal of existing vegetation and trees, and the impact of this on the local wildlife and fish in the region: There are trees on the island that are over 200 years old. The Island is home to numerous plants, animals, birds and insect populations as well as providing fish habitats.

The impact on the shorelines both on the island and on the land surrounding the island: Specifically, there will be increased issues with soil erosion as a result of the increased boat traffic caused by both the continuous shuttle service and the additional 32 new residents and their water toys. Even without the additional proposed development we are already seeing a spike in high end boats that produce huge waves that are causing damage to the shoreline and boats / docks.

The removal of waste and garbage from the island.

The storage and removal of garbage from the parking lots: How long is garbage going to sit in the parking lot bins baking in the hot sun before it is removed. There is no plan put forward to address this. This is going to attract unwanted flies and animals.

The number of septic systems and where they will be put: How will there be any guarantee that there will not be any leaks into the lake? And what happens if the barge used to drain the sewage overflows/leaks/sinks in the lake? How are these hazards to be mitigated?

Traffic: both cars and boats at all hours of the day. Excessive noise traffic will be particularly disruptive and bothersome. Increased traffic on South Portage Road and its impact on the environment and road maintenance and safety to the local residents. South Portage Rd is frequently used by hikers, dog walkers, children and cyclists. South Portage Rd is a narrow road that the local residents fought hard to have the speed reduced to 50km/hr. Most traffic still speeds past our home. I see this proposal as an increased risk to safety with no effort to reduce the risk. Who will be accountable if someone gets hurt or killed?

Lighting of the parking lots and docks. There is very little buffer zone between the proposed parking lot and the neighboring properties.

Maintenance of the docks and parking lots.

Security for the boats and cars that are left in the parking lots and docks.

The distance between the island and shore is narrow. With this number of boaters travelling back and forth there will be a major concern for the safety of individuals, including children, with swimming, canoeing, kayaking and other water activities.

The proposed 10 boat waterfront landing at 3933 South Portage Rd is immediately abutting residential properties where children swim. Access to the oversized dock by boats coming and going will cause an increased safety hazard to anyone swimming in the water.

Also with the number of cars being parked that close to the shore - environmental impact? Even pavement is a concern with its contaminants.

Gas and oil spillage happening between the island and shore access: As there is no marina close by the most likely scenario is that boats will be refueled on the docks. It is expected that each property will have at least 1 boat a piece if not more that is an additional 32 boats that risk spillage while refueling. The proposed shuttle service will require lots of fuel to maintain its daily schedule and there is no plan on how the shuttle will be refueled.

Transporting propane onto the island: Hydro is very unreliable and power outages are frequent. Propane will be needed to run generators and heating systems.

What insurances are there in place to prevent contaminating lake? How will damages be mitigated? There is no contingency plan being put forward.

THE TRUSCOTTS

Our property backs onto the Channel between the north end of the Island and the mainland (see red dot in the map below). My father, age 95, has been on Lake of Bays for over 80 years, and has made it his permanent home since the mid 1970's. I have been coming to Lake of Bays for over 60 years. The area of Lake of Bays surrounding the Island is a balance of permanent and seasonal properties, all of which will be impacted by this development. The overwhelming majority of the dwellings are modest, less than 2000 square feet, and many were built in the 1950's. The small, tranquil neighbourhood is a closely connected community given its rural nature and the routine interaction of residents while walking, kayaking, and swimming. The Island is located very close to the mainland as shown in the map.

During our tenure, change has been slow and development very limited. Some resorts on the lake have been replaced by timeshares, some older cottages replaced by winterized homes, some dwellings modestly modernized, and all with considerable effort to ensure consistency with the nature and character of the area. None of these changes had or will have the significant short- and long-term impacts of the Langmaid's Island Proposal for Development. As planned, it will destroy the last large undeveloped Island and shoreline on Lake of Bays. This is particularly salient as, supported by the owner, in the early 1990's, it was identified as one of few Muskoka Heritage Areas in Lake of Bays Township. Only 6% of Muskoka is included in this designation, with only 3% being Private Property. The environmental and social benefits of land conservation are important to reduce air and water pollution, preserve green spaces, preserve fish and wildlife habitats and biodiversity, manage and protect watersheds and wetlands, maintain scenic landscapes, and prevent erosion. These factors are all relevant in the consideration of this proposal. This proposed development needs to be challenged, particularly given its designation was known at the time it was purchased by LIC.

My father and the previous Island owner were acquaintances. The Adamson family wished to retain the island in an undeveloped state. They restricted all their buildings to one core area of the Island. The Adamson family supported its designation as a Muskoka Heritage Area, indicating that they had no desire to see it developed and assumed this designation

would protect the Island in the future. They actively participated in its science-based designation.

Langmaid's Island is one of very few properties in the Lake of Bays area designated as a Muskoka Heritage Area. With a specific notation that any development should be discouraged, especially outside the core area, the designation speaks to its diverse natural forests, fish and wildlife conservation, quality and low-level disturbance and scenic value. This is the last large and significant piece of Lake of Bays property, and large Island, that provides such environmental and social conservation. This proposal does not meet the Muskoka Heritage Area recommendations and vision for the future.

The proposals for the Island, and the mainland car and boat parking areas are not aligned with the Township of Lake of Bays nor Town of Huntsville Official Plans nor zoning. In fact, the rezoning requests are contrary to both the Heritage Designation of the Island and the Official Plans. They represent major deviations and variances with significant short- and long-term implications for the community, adjoining properties, the watershed and lake quality, as well as land and forest, wildlife, and fish conservation. The risk for degradation in each of these areas is high, if not certain.

The Heritage Designation was supported by the previous owner, the Township, the District, and the communities they represent, and was known to LIC at time of purchase.

Waterfront Landings: The rezoning of the two mainland properties for car, boat and trailer parking will significantly impact the longstanding adjacent permanent and seasonal properties. Lighting, loading and unloading of cars, boats and shuttles, Island garbage bins and recycling, etc. will disturb all the properties in Still and Williams Bays. It is an area already identified in marine reports as being congested. The increased traffic along South Portage has not been studied. Recent reductions in speed limits speak to the existing challenges for those whose residences are separated from their waterfront by the road and for the many in the area that walk or bike along South Portage Road. The Town notes that the Waterfront Landings are not consistent with the character of the area and that no buffering can be provided given the small size of the lots. The proposals do not conform to the Town of Huntsville Official Plan, nor the Muskoka Official Plan. The environmental impact of storing garbage and recycling on adjoining properties has not been considered.

One of the waterfront parking and landing areas has a driveway on a blind curve. The size of the individual lot plans suggests a requirement for more than the parking spaces identified and there is no allocation for the storage of trailers. Finally, the impact on the environment of winter use of the waterfront landings is not identified.

Tourist Commercial Facility (Still Bay Cottages): There are very few commercial rental properties remaining on Lake of Bays. The location of a parking lot here, another dock for boats, the Shuttle, and garbage collection and recycling for the Island lots will no doubt decrease or limit use of the property for tourists. In fact, it is likely to have a negative effect on the ability for the property to operate as a resort and may end up being used to permanently house those supporting the Island development as opposed to tourists. This is important as Muskoka wishes to support tourism.

THE DI MONTES

I am writing to you as a resident of 3946 South Portage Rd, located directly adjacent to 3933 South Portage Rd (the parcel of land that is joined to the larger parcel of Langmaid's Island). As an official Participant and resident, I hope to have you understand how the proposed development will negatively impact and potentially put at risk those who live in this very unique residential area

Heavy pedestrian traffic on road that bisects properties

I hope to acquaint the members of the Tribunal with the community that resides along South Portage Rd. We are a collection of residents of varying ages whose properties are very close to this once quiet road. In some cases like ours, South Portage Rd bisects our properties with residences, recreational area and storage located on both sides of the road. There is a significant amount of pedestrian traffic that uses the road during all seasons, including children in strollers, dog walkers, recreational cyclists, and joggers. It is an active community that has previously acted to have councilors visit the area to have the speed limit lowered to 50KM/hr to ensure the safety of residents and reduce the risk of pedestrian injury. Police are regularly contacted and asked to enforce speed limits. Concerns about speed and inappropriate vehicle activity have never been more important given that there are more of us who spend time here all year. While difficult to estimate, this community has almost 70% full time residency, which is considerably higher than in

my 2019 submission and in the traffic assessment conducted by LIC.

Allowing LIC to develop a 20+ car parking lot and marina on such a small parcel of land would increase traffic and possible risk of injury to this very particular community of full time, multi age residents and consequently, is not suitable for the type of development and change to the bylaw that LIC is proposing.

Nature of 3933 South Portage Rd

*The parcel of land at 3933 South Portage Rd. was previously undeveloped and unused by any of the previous owners. I ask the Tribunal to recall that this parcel of land is not currently zoned for any kind of access. It **was** a densely forested area with a completely untouched shoreline and is not currently zoned to permit a waterfront landing. Note also that its frontage is consistent with the other single family residential properties that have very modest docking and vehicle parking. Previous owners of the island never used the property as an access point preferring the more suitable marina at Baysville because it is equipped for parking, docking and the human activity associated with this. The proposed introduction of two additional sites of parking and docking for the island would unnecessarily destroy the value of wildlife, shoreline and landscape preservation and would also put residents and wildlife at unnecessary risk. Despite this, LIC during this past summer decided to clearcut a significant portion of the property, causing irreparable damage to the wildlife habitat and density of this thickly forested area (PICTURE A). Because the property is so small, the contractors who were asked to clear cut and lay landfill and gravel for a driveway had to park large vehicles on this dangerously curved part of the road. The small amount of land is simply not conducive to this type of development and will potentially risk personal and property injury to residents and those who access the road and who live nearby.*

In addition to clear cutting and building a driveway before any permission from the township or this body was granted, LIC also commissioned Ontario Hydro to run an extraordinary amount of power cables from the 3933 South Portage Rd under the lake, to the island (PICTURE B). In doing this, barges and large industrial boats came onto the shoreline and caused irreparable damage while dredging and mooring heavy equipment. The suggested development for this parcel of land is nowhere near compatible with

abutting properties and setbacks both on land and on water will be impossible to maintain, especially now that clearance for Hydro cables must be observed. As shown in Picture C, the property does not provide enough frontage to allow safe access for multiple boats and large equipment and barges. In addition, because of the slope and grading of this small property, it is unlikely that LIC will be able to manage stormwater and drainage, adversely affecting abutting properties (see Picture D). I have already noticed increased wetness on my property because of the action of removing trees and paving over the dense forest and I anticipate this to be more severe during the spring runoff.

The proposal by LIC and their conduct this past summer, speaks directly and dramatically to LIC's negligence and bad faith. Once given permission, LIC has demonstrated that they will act to suit their objectives and have no regard for the danger and damage it causes to residents, wildlife or the landscape.

I urge you to review my previous proposal (attached), which contains concerns about personal safety and liability, alongside this letter and to reject the proposal by LIC.

SAM HART

I own the property at 1015 Whiskey Point Lane. My family re-located here in 1954 from the south-east shore opposite Bigwin Inn where my grandmother's cottage has been located since the 1800s. Thus as a long term, now resident, I would be directly affected by the development of the Island. Whiskey Point marks the entrance to the Channel. The Town of Huntsville Staff Report of Nov 20, 2018 recommended that the Zoning amendment applications be denied. The full 226-page report provided more than sufficient evidence that development of the Island would be detrimental to the environment as well as to the island itself. Dr. Derek Coleman of Ages Consultants Limited revealed in his 36-page report contained therein, detailed technical evidence that would support this conclusion. As well, all those whose cottages would be negatively impacted along with their respective lifestyles and whose comments were part of this report, provide additional evidence that the development of the Island would be catastrophic. There is little I can add to their content except to agree with it.

Because Whiskey Point is so close to the Island, less than 100 yards, it would be obvious to anyone that my property is the closest to the Island. A major concern, which has been

addressed in the Report, is boat traffic. Guests in the cabin located on that Point have remarked on how busy this waterway is on weekends. As well, it is not uncommon to see some paying no attention to the speed with which they enter the waterway. And it's not just PWCs that are guilty of this offense. Large powerboats whose front deck areas prevent proper forward visibility, would be especially at risk. I happen to own two sailboats that are moored in that waterway located on the left just beyond the entrance. One is an 18' Interlake Sloop. and the other a 22' 9" Star. When these boats are under sail, I need room to navigate out of and into the Channel. Power boats must give way to sailboats. Not every powerboat driver is aware of this rule. There have been close calls. The traffic will increase significantly with the development of the Island. Swimming in the channel will invite significant risks. All it will take is a serious injury or death to invite ruinous lawsuits in this increasingly litigious society. And who will the defendant's be? It would need to be those who permitted the development and those who actively sought it, despite the reports and arguments against the development.

SUSAN HEATH

My main concerns with the proposed Official Plan Amendment (OPA) are the threat of permanent loss of a largely undisturbed natural habitat as the development proposed by Langmaid's Island Corporation (LIC) goes way beyond what is contemplated in the Township of Lake of Bays Official Plan (LOBOP) and the precedent that would be created by allowing such an OPA.

From a development point of view, what strikingly holds Langmaid's Island apart from thousands of other properties on Lake of Bays and within the Township of Lake of Bays and District of Muskoka is that it is designated as a Muskoka Heritage Area, and that it is specifically mentioned in LOBOP Sections D.96 to D.100 as a means to protect the values leading to the Heritage designation by requiring a higher standard to be met for any development.

'Six percent of the land base of Muskoka was identified as being significant. Crown land makes up approximately half of that area, or three percent of Muskoka's significant areas. The Province of Ontario, through the Ontario Living Legacy Program, has recognized the Crown land portions of those sites as Conservation Reserves or part of new provincial

parks. The remaining three percent of the identified Heritage Areas and Sites are on private land.

Heritage Areas and Sites were identified with the goal of protecting significant features as development occurs in Muskoka. Special areas, such as Muskoka Heritage Areas, bring an identity to an area and represent the uniqueness of one part of the Province. There is a need to recognize these special areas in advance of development pressures in order to ensure that they are protected for the future.'

The Natural Heritage designation was created in the early 1990s, in contemplation of standing against the exact kind of development pressure we are now experiencing (the LIC's development proposal and it's request for the OPA) with the purpose of preserving locally and regionally significant natural areas. It was designated with care using scientific, collected data (see <https://muskoka.civicweb.net/document/4837> Natural Heritage Evaluation of Muskoka, February 1994 by Ron Reid and Bonnie Bergsma) and the private property owner at the time, wished to maintain the island in a natural state (page 201 – 203), so presumably was in favour of this designation. Many properties were examined at the time but not all would meet the criteria for designation, some promising, but lacking permission for access, some already disturbed by development or logging. (See pages 239 -244).

Half the Muskoka Heritage designated properties were on Crown land; these were more solidly protected by virtue of the ownership status. Unlike the Langmaid's Island private ownership, these Crown lands were able to be strongly protected by becoming parts of provincial parks or through the Ontario Living Legacy Program. If someone tried to buy part of a provincial park for development – if a purchase or lease would even be contemplated, it is unlikely extensive development would be permitted. In fact the whole concept seems ludicrous.

Section 100 begins with - Where it is not feasible to preserve the whole island in its natural state certain procedures may be used to protect certain important areas and features.

I have not read any argument by the current owners (LIC) to convince that their proposal falls within this section. It seems they go little beyond quoting the section, but they should

be supplying evidence that their development proposal would fit under the description of “Where it is not feasible”.

The Township of Lake of Bays Official Plan was written to specifically name Langmaid’s Island for a higher level of development protection than other properties in the Township. The LOBOP provides that development of natural heritage areas is not prohibited, but in the case of Langmaid’s Island it is very restricted and specifies that any development be in the already developed area, while contemplating some other development that may be feasibly constrained into the values listed as being important to this Muskoka Heritage area. In fact Section D.75 of the LOBOP says that ‘Natural heritage areas and sites will be protected through the use of various methods appropriate to the circumstance, including amongst others: a) prohibiting or restricting development through specific Official Plan policy...’ and the Township has chosen this method to restrict development.

Langmaid’s Island is identified as a Muskoka Heritage Area not just for it’s natural features and scenic beauty but also for it’s largely undisturbed forests, shoreline and beaches. Development of 30 odd lots could not take place without disturbing these areas. You clear an envelope for dwelling, septic, path to water, boathouse, shoreline activity area – the most significant heritage feature, undisturbed forest, shorelines and beaches is destroyed. The recreational use of the island within the existing developed area coincides with the undisturbed nature of the majority of the island. Moving into the undisturbed area to develop more recreational use lots by definition cannot be considered to co-exist with the concept of undisturbed land.

The proposed OPA allowing the development of over 30 waterfront lots will result in the destruction of the values that set Langmaid’s Island apart from other lake lots as a Muskoka Heritage Area, the key value being destroyed is the largely untouched nature of the island’s landscape. My major concern is that should LPAT allow the OPA there would be a permanent loss of a largely undisturbed natural habitat that is intended to be protected from substantial development. My other concern is that this would set a precedent for the possibility that other privately held Muskoka Heritage Areas are open for development.

THE TRIGIANI FAMILY

Our family has been grateful to have ownership of our cottage on S Portage, a District Official Planting as a home, since 1995. While recognizing ownership of any homestead must come with acceptance of reasonable changes to the community for the betterment of the community, never was it anticipated that we should accept neighbouring to a parking lot / garbage dump and witness dramatic alteration to a pristine, historical and ecological landmark such as Langmaid's Island. We are certain that within your own neighbourhood you uphold the same sense of pride and thus would similarly reject such a proposition.

Every community has differing priorities in terms of its plans for development. I firmly believe most people associated with our community in LoB / Huntsville region as well as similar communities in the Muskoka Region place a great deal more emphasis to the preservation of native lands, nature and ecology than, for example highly urban areas such as Toronto. Respecting our own minute parcel, having solicited permits for modest improvements, we have incurred multiple revisions and delays for what we believed to be seemingly benign changes to satisfy criteria pertaining to environment, shoreline, etc. We have readily accepted this as a privilege to ownership in this wonderful community. It is with this experience and understanding that we find the haste and ambiguity of the Langmaid's Island development application to be most perplexing, disturbing and inappropriate.

In my former years as an engineer in varying capacities within the automotive sector and the last 30 years as co-owner of a small business in a highly competitive market I certainly understand the challenges of meeting budgets and generating new revenues. I have also appreciated the a District Official Planting of good business ethics as an important characteristic to achieving long-term objectives.

I recognize that whether this proposed development renders a financial gain or despairing loss is inconsequential to my opposition (though existing similar developments in our community have fallen very short of their expectation thus would argue the latter). Nonetheless, the changes will be permanent, destructive and irrevocable. We implore you to veto this development application or in the least, defer the decision to Council elect.

CONCLUSIONS AND RELIEF REQUESTED

278. In closing, the Lake of Bays and the Lake of Bays Heritage Foundation respectfully urge the Tribunal to favour the public opportunity over the private opportunity sought by LIC. That request is supported by the Councils of the Township of Lake of Bays, the Town of Huntsville, the Participants and, it would seem, many members of the public who followed these proceedings.

279. In our submission, Dr. Coleman’s evidence regarding the environmental impacts of the proposed development and, specifically, the impact of development on the natural heritage values on Langmaid’s Island, is to be preferred. His evidence may be summarized as follows:

- a) The classification of Langmaid’s Island as a Natural Heritage Area (“NHA”), through the *Natural Heritage Evaluation of Muskoka* prepared under the Muskoka Heritage Areas Program in 1994 (“Reid and Bergsma Report”)⁹⁰ was, and remains accurate;
- b) The inventories of the features and values of Langmaid’s Island, including the values for which the Island was determined to be important and protected *as an NHA* – diversity, quality, and scenic values – were not properly addressed in the Riverstone EIS or MHBC Planning Justification Reports. Nor does the EIS contain sufficient information to determine the environmental impact of the proposed development;
- c) The proposed development is not consistent with PPS direction, nor does it conform to the DISTRICT OFFICIAL PLAN or TOWNSHIP OFFICIAL PLAN policies relating to conservation of the natural environment and the Island’s natural heritage features;
- d) The proposed implementing By-law and mechanisms (limited zoning, conservation easements and character guidelines) are unlikely to be effective in protecting the Island’s natural values; and
- e) As a result, the proposed development is not good environmental planning and should be refused.

⁹⁰ *Natural Heritage Evaluation of Muskoka* – Reid and Bergsma, 1994, Exhibit 40 (“Reid and Bergsma Report”).

280. Similarly, in our respectful submission the evidence of Mr. Fahner, Ms. Markham, and Ms. Maxwell should prevail over the planning evidence called by LIC. As Mr. Fahner explained:

- a) Langmaid's Island has been a Heritage Area for over 20 years;
- b) The Township Official Plan is clear that development on Langmaid's Island is to be limited, not prohibited, but extremely limited;
- c) The number of habitable buildings being proposed on Langmaid's Island would result in an unacceptable intensity of use, deficient parking, docking and spoiled views of the island, including its undisturbed shoreline; and
- d) The two proposed waterfront landings do not conform with the official plan requirements of both the Township and the Town and were not compatible with abutting properties.

281. The planners for the Town of Huntsville, the Township of Lake of Bays, the Lake of Bays Association and the Lake of Bays Heritage Foundation all agreed that the LIC applications are not consistent with the Provincial Policy Statement, do not conform to the District of Muskoka Official Plan, the Town of Huntsville Official Plan, the Township of Lake of Bays Official Plan and do not represent good planning.

282. At the end of the day, a purposive reading of the Muskoka Heritage Area Official Plan policies for Langmaid's Island suggests that the whole island is to be preserved. Where that is not feasible, new lots should only be created in the already disturbed area. In our submission, that is where the analysis ends. It is simply not credible to suggest that the features and values of Langmaid's Island, including the undisturbed shoreline, can be protected in the event of the subdivision of the entire island.

283. Accordingly, we respectfully request that the appeals be denied. Thank you for your attention to these submissions.

ALL OF WHICH is respectfully submitted this 5th day of March 2021.

A handwritten signature in black ink, appearing to read 'H.G. Elston', with a long horizontal flourish extending to the right.

H.G Elston

A handwritten signature in black ink, appearing to read 'Matthew Hodgson', with a long horizontal flourish extending to the right.

Matthew Hodgson