

an easement in favour of the Township to allow for the construction and maintenance of shorewalls. Since the inception of the development, shorewalls were engineered and erected to prevent erosion of the properties that abut or are adjacent to the canals within Lagoon City.

- [3] The Respondent, Lagoon City Parks & Waterway Commission (the “Commission”) was created in 1987 by the Township pursuant to provincial legislation, *An Act respecting the Township of Mara*, S.O. 1986, c. Pr21 (the “*Mara Act*”). The *Mara Act* authorized the Township to establish the Commission to provide for the governance of the lands conveyed to the Township, including those on which the shorewalls are constructed.
- [4] The *Mara Act* also authorizes the Township to make a by-law requiring every owner of land abutting the canals to construct and maintain a shorewall at the owner’s expense, to the specifications and within the timelines set out in the by-law. Where an owner fails to do so, the Commission may do so at the owner’s expense, provided certain procedures are followed.
- [5] On February 10, 2020, the Township passed By-law No. 2020.16, *A By-Law Regarding the Construction and Replacement of Shorewalls Within the Development Known As Lagoon City*. In doing so, the Township repealed and replaced By-law 2017.25, a by-law having an identical name.
- [6] The effect of By-law 2020.16 was, among other things, to make the engineering specifications supplied by the Commission for repair and replacement of the shorewalls mandatory, and to make the Commission’s decision on the necessity of shorewall repair or replacement final, in the event of an owner’s appeal.
- [7] At the core of this dispute is that By-law 2020.16 mandates that concrete fascia and coping be an essential, although purely aesthetic, design requirement.
- [8] On July 27, 2020, the Township amended By-law 2020.16 by passing By-law 2020.57, (together the “New By-law”). The effects of By-law 2020.57 were to transfer the powers of the Commission to the Township, to provide that an appeal lies only to the Township, and to make the Township’s decision on the necessity of a repair or replacement of a shorewall final.
- [9] The Applicants are all residents of Lagoon City who are owners affected by the enactment of the New By-law.
- [10] The Applicants request:
 - (a) A declaration that the New By-law is *ultra vires* and void, and an order quashing it;
 - (b) A declaration that the New By-law is contrary to provincial statute, and an order quashing it;

- (c) A declaration that the New By-law was enacted in bad faith, and an order quashing it;
- (d) An order directing the Township to grant the permit applications submitted by the Applicants to replace the shorewalls abutting their respective properties;
- (e) An order directing the Commission to render a decision as to the necessity of repair or cost of construction or repair of the proposed works;
- (f) An interim order pursuant to s. 273(4) of the *Municipal Act, 2001*, S.O. 2001, c. 25 (“*Municipal Act*”) directing that nothing shall be done under the New By-law pending determination of this Application; and
- (g) Costs.

[11] At the conclusion of argument, this court granted an interim order requiring that no enforcement steps be taken while this matter was under reserve by the court.

Positions of the Parties

[12] The Applicants assert that the New By-law should be struck due to illegality. Their position is that By-law 2020.16 and its amending by-law, By-law 2020.57, exceed the powers granted to the Township, are contrary to the terms of the *Mara Act*¹, and were passed in bad faith.

[13] The Applicants do not dispute that the shorewalls need to be repaired and recognize that shorewalls are essential infrastructure for Lagoon City. However, they object to the design requirements that have been foisted upon them by the Committee and the Township, who have ignored all engineering advice to the contrary.

[14] The Applicants, who are all retired, will collectively be forced to spend hundreds of thousands of dollars to replace shorewalls with concrete façades if this application is not granted. They argue that the demand by the Commission for concrete caps and fascia is made purely for aesthetic reasons.

[15] In 2018, two of the Applicants, Kenneth and Georgi Jennings, submitted building permit applications with stamped engineering drawings to rebuild their shorewall, which they say complied with the by-law in force at the time, and which offered a less expensive and more beneficial alternative. They were deliberately thwarted by the Respondents. The rest of the Applicants submitted their building permit applications in 2019. During this litigation, the Respondents have admitted that the Jennings’ building permit application met the requirements of the earlier by-law.

¹ The full text of the *Mara Act* is set out in Schedule A to these Reasons.

- [16] Even when the Applicants followed the *Mara Act* and all applicable by-laws, the Respondents instructed the Chief Building Officer not to issue the permits. The Commission also refused to decide some of the Applicants' appeals. Instead, they passed the New By-law to ensure that the building permit applications were no longer compliant and to ensure that the desired concrete aesthetic would be achieved.
- [17] The Applicants argue that the New By-law and the circumstances of its enactment bear sufficient badges and indicia of bad faith on the part of the Respondents to have it quashed. Further, it was passed for a purpose collateral to the *Mara Act* and conflicts with the purpose and provisions of that *Act*.
- [18] The Respondents' position is that they have acted within the scope of their authority and in good faith, and it is not for this court to substitute its own views for that of publicly elected officials. The New By-law was passed for the purpose of requiring the construction and maintenance of shorewalls, which are necessary to prevent erosion and degradation that could adversely affect the canals, as indicated in its preamble.
- [19] By-law 2020.16 derives its express authority from the *Mara Act*, as well as s. 5 of the *Municipal Act*. The Respondents emphasize that municipal powers are to be interpreted broadly and generously within their context and statutory limits to achieve the legitimate interests of the public, and only in the clearest of cases should a municipal by-law be held to be *ultra vires*.
- [20] Further, the Respondents take the position that the Applicants have failed to meet the heavy onus on them to establish that the Township acted in bad faith. According to the Respondents, By-law 2020.16 involved much public debate and the Applicants were aware, in advance, that the Township was tabling it for a vote. Much of the Applicants' evidence and argument relates to the unreasonableness of the New By-law, which is irrelevant to the issue of whether a by-law is illegal. Further, the Respondents submit that any conduct amounting to bad faith on the part of the Committee, which is denied, is not the conduct of the Township Council.
- [21] The Respondents submit that the modern judicial approach is to exercise restraint and not impinge on municipal democracy by quashing a by-law, and that such an approach should be followed on this application.

Evidence

- [22] The evidence on this application is derived from:
- (a) The affidavits of Georgi Jennings ("Jennings") and Mark Kolberg ("Kolberg"), submitted by the Applicants. Jennings is one of the Applicants. Kolberg is a professional engineer with expertise in marine and coastal engineering, who authored an expert report for this proceeding;
 - (b) The affidavits of Leo Grellette ("Grellette") and Tim Collingwood ("Collingwood"), submitted by the Respondents. Grellette is the Senior Advisor for

Planning Services for the Township. Collingwood is a professional engineer with the firm of Tatham Engineering Limited, consulting engineers for the Township.

- (c) Evidence taken on the cross-examinations of Jennings, Grellette and Collingwood.

Lagoon City

- [23] The Corporation of the Township of Ramara is a municipal corporation incorporated pursuant to the provisions of the *Municipal Act*. It was formed in 1994 by the amalgamation of the townships of Rama and Mara.
- [24] The Applicants are all neighbours who reside in Lagoon City on Old Indian Trail, each owning property backing onto a canal.
- [25] An early 1970s promotional brochure for Lagoon City shows that the development was created as a planned community for recreation and retirement. There are approximately 2,000 residents of Lagoon City.
- [26] A unique feature of Lagoon City are the canals that run along the rear of each property in the development. There are 16 kilometres of intersecting canals that provide access to Lake Simcoe.

Shorewalls

- [27] Shorewalls were erected along the canals to divide the water from the land. The purpose of the shorewall is to act as a retaining wall to prevent erosion of a portion of the lots that are adjacent to the canals. The Township has an easement over the first 10 feet of land from the canal.
- [28] There are approximately 876 shorewalls within Lagoon City. It is uncontested that the construction and maintenance of the shorewalls is the responsibility of property owners.
- [29] There are three types of shorewalls currently in place. The most common type has a concrete fascia backed with wooden sheathing. There are also shorewalls comprised entirely of wood, and others comprised entirely of concrete. Most shorewalls are capped by concrete coping.
- [30] The definition of shorewall in the *Mara Act*, and the New By-law, is the same:
- “shorewall” means a building improvement on a lot or block on a registered plan of subdivision or registered reference plan abutting a waterway and constructed to replace the natural shore at the rear or side of the lot or block.

The Mara Act

[31] On November 4, 1986, the Legislature enacted a Private Member's Bill, being the *Mara Act*. The *Mara Act* was specifically aimed at regulating Lagoon City and its canals, waterways, shorewalls, and parks.

[32] The preamble to the *Mara Act* provides:

Whereas The Corporation of the Township of Mara considers it desirable that it be given power to acquire real property, including easements in or over real property, that is being used, or intended to be used, for private parks, foot-bridges, foot-paths and waterways; that it is also desirable that the Corporation be given the power to establish a local board to manage, maintain, regulate and control the property so acquired; and whereas the Corporation desires to apportion the cost of the maintenance and regulation among the properties obtaining a benefit therefrom; and whereas the Corporation hereby applies for special legislation for such purposes; and whereas it is expedient to grant the application;

[33] The *Mara Act* permits the Township to pass a by-law to create a commission, specifically the Lagoon City Parks and Waterways Commission established pursuant to subsection 3(1) of the *Act*, to manage, maintain, regulate and control easements and lands conveyed to the Township, including waterways. Pursuant to subsection 3(2), the Commission is a local board within the meaning of the *Municipal Affairs Act*, R.S.O. 1990, c. M.46.

[34] Pursuant to subsection 4(1) of the *Mara Act*, the Commission shall consist of two members appointed from Council, and three members appointed by Council who must be owners or tenants in a registered subdivision in which land has been conveyed under the *Mara Act*.

[35] Pursuant to subsection 7(1), the Township may make a by-law requiring every owner of land abutting a canal to convey to the Township an easement on which to construct and maintain a shorewall, at the owner's expense, to the specifications and within the time limits set out in the by-law. Under subsection 7(3), where an owner fails to do so in accordance with the by-law, the Commission may construct or repair the shorewall at the owner's expense.

[36] The *Mara Act* contains provisions for owners to appeal a decision of the Commission. The Commission is required to give the owner an opportunity to make oral or written submissions as to the necessity of repair or cost of construction or repair provided that the procedures set out in the *Mara Act* are followed. Thereafter, the Committee is required to advise the owner of its decision after consideration of any objections.

[37] Subsection 7(4) of the *Mara Act* allows an owner to appeal the decision of the Commission to the court of revision established under s. 43 of the *Local Improvement Act*, R.S.O. 1990, c. L.26, as repealed by s. 484(2) of the *Municipal Act*. Where such an appeal has been commenced, no work referred to in the appeal shall be undertaken by the Commission until

the court of revision has made a decision or, where a further appeal has been made to the Ontario Municipal Board (now its successor, the Local Planning Appeal Tribunal), until that tribunal has rendered its decision.

- [38] Under subsection 7(6), the court of revision has jurisdiction and power to review the necessity of repair or the cost of construction or repair of the work proposed by the Commission and may order that additional estimates of cost be obtained, and/or that an inspection and report be provided by an independent, qualified engineer.

By-Law 97.54

- [39] The longstanding by-law that governed the shorewalls in the Township was By-law No. 97.54², *A By-law Regarding the Construction and Maintenance of Shorewalls Within the Development Known as Lagoon City* (14 July 1997), which served to standardize the construction and repair of the shorewalls.
- [40] Stamped engineering designs, attached as schedules to By-law 97.54, allowed for three different shorewall designs. The provisions of section 4.0 are most relevant. Section 4.2 required that all construction and maintenance of shorewalls was to be carried out in accordance with the designs and specifications of a professional engineer unless, as set out in section 4.4, a steel pile could be driven at least three feet into the bedrock. In that case, concrete shorewalls were required to be used for a “straight wall” configuration, and steel shorewalls were required to be used for “angled recess” shorewalls.

The 2015 Inspection by the Commission

- [41] In 2015, the Jennings made a visual inspection of the shorewalls from the canals, noting that some appeared to be in poor condition. They saw that some of the walls capped with concrete coping were sinking or leaning out into the canals, while others had deteriorating concrete with exposed tie rods or missing beams. Some of those constructed entirely of wood were likewise in disrepair.
- [42] In September 2015, the Commission also conducted a visual inspection of the shorewalls. The Commission then sent letters to some property owners, one of which was received by the Applicants, Gilles and Beryl Bertrand. The correspondence stated that the Bertrand’s shorewall had to be repaired or replaced and demanded a response within 30 days.
- [43] Beryl Bertrand objected on the basis that the Commission members were not engineers and had no qualifications to justify imposing the heavy costs of replacing shorewalls based on a visual inspection alone. The Commission subsequently sent a follow-up letter asking property owners to disregard its earlier correspondence and stating that a new approach would be forthcoming.

² A complete copy of By-law 97.54 is attached to these Reasons as Schedule B.

Recommendations of the Township's Engineers

- [44] Shortly after purchasing her property in 2015, Jennings began to attend the Commission's monthly public meetings. The shorewalls were a frequent topic of discussion. At one of the first meetings she attended, then-Chairman Bob "Skip" Beatty publicly stated that the commissioners wanted all shorewalls to have concrete caps and fascia. It was apparent to her from the beginning that the commissioners were focused on aesthetics.
- [45] The Commission passed a resolution on October 8, 2015 to investigate a shorewall inspection program with the Township engineers, C.C. Tatham & Associates Consulting Engineers ("Tatham"), and to seek Tatham's recommendations on amending or replacing By-law 97.54.
- [46] Tatham began its inspection process in September 2016, involving 58 properties as the first phase of a multi-year inspection program. In mid-September, Jennings met the engineer-in-training with Tatham, who introduced himself as such, who was performing a visual inspection of one of the shorewalls. He seemed to be alone and was carrying no equipment other than a clipboard. She discussed these inspections with several of her neighbours, who reported that they had seen the same engineer-in-training, unaccompanied.
- [47] Tatham produced an inspection report dated November 23, 2016. Although the report was sealed by a senior engineer, it was authored by the trainee.
- [48] The report concerned the Jennings because it did not include any geotechnical analysis of the soils or any underwater inspection of the shorewalls. When rebuilding their home along the canal the previous year, the Jennings had learned about the importance of a proper geotechnical assessment of the soils for any plan to rebuild, from the professionals they retained.
- [49] Tatham's 2016 report made several recommendations. Finding that it would be impractical to drive steel piles three feet into bedrock, Tatham recommended that the wording of section 4.4 of By-law 97.54 be revised to state that the piles be driven to refusal at bedrock. After noting that the By-law restricts the shorewalls to certain types and configurations, they recommended that the Commission define the allowable wall types in more detail, including possible alternative materials, while maintaining the desired general aesthetics as per section 4.3. This recommendation was made "in order to allow property owners to better manage their wall construction and to provide an opportunity for property owners to consider construction cost and the lifecycle cost-benefit of different material types". Tatham also recommended that By-law 97.54 be revised to clearly define the aesthetics desired by the Commission.
- [50] The Tatham report also noted that the leaning of shorewalls observed during the inspection may be attributed to the relatively heavy concrete fascia panels. The report states: "upon review of the standard designs, we believe the weight and eccentricity of the concrete fascia panels would only advance the leaning upon a failure of the tie-backs and/or anchorage."

- [51] A geotechnical study has never been identified or produced by the Township, even though Ken Jennings requested a copy of any existing report.
- [52] Tatham then sent a letter to the property owners to submit a proposed work plan for shorewall repairs to the Commission by October 31, 2017. These owners are part of the “Phase One” inspection.
- [53] The Township issued invoices to the owners for Tatham’s inspection, which was charged at a rate of eight dollars per linear metre. Four years later, and only because of the Applicants’ demands after learning that this was an unauthorized charge, the Township reimbursed the owners for this cost.

By-law 2017.25

- [54] On April 13, 2017, the Commission met to discuss potential amendments to By-law 97.54. Although this was a public meeting, the agenda was not posted when Jennings checked the night before, nor the following morning before the scheduled start time of 9:30 a.m. As she had other commitments that day, she did not attend and was unaware that by-law amendments were to be discussed.
- [55] On April 24, 2017, the Township Council passed By-law No. 2017.25, *A By-law Regarding the Construction and Maintenance of Shorewalls Within a Development Known As Lagoon City*.³
- [56] It is Jennings’ uncontested evidence that roughly two-thirds of Lagoon City residents are cottagers or snowbirds who had not yet returned for the season by April 24. Even for the year-round residents, the Minutes of the Commission’s April 13, 2017 meeting were only made available weeks after By-law 2017.25 was passed by the Township.
- [57] By-law 2017.25 did not clearly define the aesthetics required by the Commission, as suggested by Tatham.
- [58] Section 2 of By-law 2017.25 requires maintenance and construction to occur in accordance with the By-law. Owners were required to maintain the shorewall in a state of repair satisfactory to the Commission, but importantly, s. 2.2 provided that “the requirements of the said Commission shall at no time exceed the specifications set out herein”. Section 2.3 states that “all construction or repair work shall conform to the specifications set out in [s]ection 4 herein”.
- [59] The critical section pertaining to shorewall repair and maintenance is again section 4. Under s. 4.2 of By-law 2017.25, an owner was again only bound by the requirement to construct a shorewall based on a design supplied by that owner’s own engineer. Section 4.2 provides that:

³ A copy of By-law 2017.25 is attached as Schedule C to these Reasons.

All construction or maintenance of shorewalls shall be carried out in accordance with the designs and specifications of a professional engineer retained by the owner, except as provided in 4.4, 4.5, 4.6.

- [60] Under section 4.2, the inclusion of concrete fascia panels is not identified as one of the additional requirements to be included in the design to be prepared by the professional engineer retained by the owner. Nothing in 4.2 requires the owner to comply with the design and specifications set out in either Schedule B or C, nor does it reference s. 4.3.
- [61] Section 4.3 states that all designs and specifications shall be prepared to maintain the “general exterior appearances shown in Schedule B and Schedule C”. “General exterior appearances” is not defined. Those Schedules show that concrete caps and fascia were indicated. However, the designs in those Schedules were to be used only where the steel pile could be driven at least three feet into the bedrock, and even then, they are only an option.
- [62] At section 4.4, By-law 2017.25 addresses the issue of steel piles being driven to bedrock refusal, allowing for use of the designs specified in Schedule B or C in the event that the owner did not have professional engineering designs.
- [63] Section 4.5 states that the deadhead anchors depicted in Schedules B and C may be used if the repair does not involve the replacement of any piles.
- [64] Under section 4.6, all steel surfaces directly exposed to open-air or steel elements below grade having less than one foot of permanent soil cover were to receive an application of a corrosion inhibitive coating.

Questions Posed by the Jennings

- [65] At the Commission meeting held on May 11, 2017, Ken Jennings gave a deputation in which he posed questions about the recommendations in the Tatham report and By-law 2017.25. Many of those questions were focused on the cost of the materials required by By-law 2017.25. They also focused on the lack of public consultation prior to the Commission’s recommendations being placed before the Township to be promulgated in what appeared to be a rushed manner, occurring only nine days after the Commission meeting.
- [66] Those questions were not answered at the meeting. The Commission instead adopted a motion by Deputy Mayor/Commissioner John O’Donnell to answer the questions. Two months later, the questions remained unanswered, but the Commission continued to give assurances that it would do so. At the Commission meeting held on July 13, 2017, the Commission passed another motion affirming that it would answer these questions.

Community Meeting July 2017

- [67] In July 2017, the Jennings organized a community meeting for Lagoon City property owners who would be impacted by By-law 2017.25. They invited the Commission to speak

and answer questions. Since very few property owners heard about the Commission's discussion of the By-law or its recommendations to the Township in time to participate, the Jennings hoped to create an opportunity for the people most affected to hear the basis for the Commission's recommendations regarding By-law 2017.25.

- [68] The day before the scheduled meeting, the Commission Chairman, Todd Billinger, sent Jennings an email stating that the Commission would not attend the public meeting unless all questions were removed from the agenda.
- [69] Feeling they had little choice in the circumstances, the Jennings agreed. The meeting went ahead and was attended by roughly 120 Lagoon City residents. During the meeting, Commissioner/Ward 5 Councillor Kal Johnson recommended that those property owners concerned with the cost of repairing or replacing their shorewalls should form a group to negotiate better prices.
- [70] On August 10, 2017, at the next Commission meeting, its members voted to rescind its previous two motions to answer the questions posed by Ken Jennings at his deputation. Those questions were never answered.

Lagoon City Phase One Group

- [71] In September 2017, the Jennings and the Bertrands organized another public meeting for Lagoon City property owners. Roughly 75 owners from the area affected by the Phase One inspection met to discuss forming a group to find a cost-effective, environmentally friendly alternative to the Township's shorewall design. This group informally refers to itself as the "Phase One Group". The Applicants are all members of the Phase One Group.
- [72] Through the financial contributions of its members, the Phase One Group compiled a team of experts: a civil engineer, Stiemer Engineering; a marine contractor, T&C Construction/Welding Ltd. ("T&C"); a geotechnical engineer, Cambrium Inc.; and a supplier, Crane Manufacturing Industries ("CMI").
- [73] The product offered by CMI is synthetic sheet piling, which is used as an alternative to concrete. The Jennings were aware of this material from having seen shorewalls constructed with it in other communities and had been impressed by the clean aesthetic and apparent durability. They understood that it did not crack or spall with age, and having no steel components, would not rust or corrode.
- [74] On October 23, 2017, Jennings made a deputation at a Township Council meeting to request a six-month extension for the Phase One property owners to submit their proposals for repair and remediation.
- [75] On October 31, 2017, the Phase One Group submitted a letter to the Commission stating that they were working with an engineer to develop an alternative shorewall design that would be cost-effective, aesthetically similar, and environmentally friendly. The letter also stated that the group planned to proceed with the required remediation and anticipated moving forward with applications for the required permits in a timely manner.

- [76] By the end of 2017, the Phase One Group had formally retained Stiemer Engineering. On February 2, 2018, the group held a meeting with representatives of CMI, T&C and Stiemer Engineering, as well as a representative from the local distributor for CMI products. The group secured a commitment from CMI for technical assistance and additional engineering expertise, and the supplier agreed to supply the synthetic sheet piling at a group rate. That same month, the group retained Cambrium Inc. to conduct a geotechnical analysis and produce a soil report for the Phase One area.
- [77] In July and August 2018, T&C provided quotes to various members of the Phase One Group for the replacement of their shorewalls using synthetic sheet piling. Samples of these quotes that are included in the application record range from \$43,172 to \$72,676.
- [78] On October 16, 2018, Stiemer Engineering provided the stamped drawings for the shorewall design. Although the drawings were for the Jennings' property, they represent the design intended to be used by the entire Phase One Group.

Default Notices

- [79] Throughout their efforts, the Phase One Group kept the Commission apprised of their efforts to repair or rebuild their shorewalls. This included Steimer Engineering sending a letter to the Township in September 2018 that provided an update on the group's shorewall design.
- [80] Nonetheless, on or about November 13, 2018, the Applicants (except the Jennings) received notices on Township letterhead and signed by the Commission indicating, among other things, that they were in breach of their obligations under By-law 2017.25. The correspondence stated that the Commission would act to repair or replace the shorewalls at the owners' expense, according to the plans and specifications set out by the Commission.
- [81] The notices were accompanied by preliminary estimates prepared by Tatham for the construction cost. For the Applicants, these ranged from \$84,000 to \$117,950.
- [82] As stated, the Jennings did not receive a default notice. The reason for that was that earlier that month, on November 1, 2018, a representative of T&C submitted the Jennings' applications for the building permits necessary to replace their shorewall to the Township's building department, including the stamped engineering drawings.
- [83] The Township did not issue a receipt for the Jennings' application until the following year, on April 1, 2019. The Township also never processed their application.

Committee Use of Private E-mail to Communicate

- [84] The evidence establishes that the commissioners used their private emails to communicate from time to time.

- [85] For example, attached as Exhibit 19 to Jennings' affidavit is an email sent on July 14, 2017 by the Commission Chairman Billinger, which informed the Jennings about the Commission's position on the questions required to be removed from the agenda for the public meeting. Although the Chairman sent the email in his public capacity, he used an email account from his private company, High Command Distributing. It is Jennings' evidence that Billinger addressed the email to all but one of the other commissioners at their personal emails.
- [86] It was at this point that the Jennings became aware that the commissioners appeared to regularly conduct official business through personal email accounts.

Tatham Review of the Stierner Drawings

- [87] In December 2018, Tatham conducted a peer review of the Stierner designs. The Phase One Group paid \$750 to cover the expense of the review despite the fact that it was not in the Township's fee schedule.
- [88] Tatham's review was released to the Commission on December 11, 2018. The report noted that the design details did not refer to a concrete fascia panel or concrete coping, but instead specified a cap by the manufacturer. Tatham recommended further review by the Commission as to whether the proposed material will conform to the generally consistent appearance that By-law 2017.25 was attempting to preserve throughout the development. Otherwise, no significant problems were noted with the Stierner design.
- [89] On December 13, 2018, the Commission scheduled a meeting. T&C contacted the Commission in advance of the meeting and requested time to speak and present information. The response from the Council/Committee Coordinator and Committee Secretary/Treasurer, Nicole Brittain ("Brittain"), was that the peer review and the "initial drawing submitted" would be one of the first items to be reviewed, during closed session.
- [90] The Phase One Group's engineer, marine contractor, and a CMI executive who had flown in from Georgia all attended the December 13 meeting, but the Committee did not allow any of them to present their information.
- [91] Throughout 2019, the Jennings made inquiries about whether their building permit application would be approved, but even when they personally went to the building department to see if there were any updates, they received no information.
- [92] On more than one occasion, Ken Jennings called the Chief Building Officer, Dave Wellman, to ask for updates on the status of their building permits. Ken Jennings was told that the Commission had instructed the building department not to issue the permit.

Appeal Hearing

- [93] Those Applicants who had received default notices (the "Appellants") appealed to the Committee in accordance with the *Mara Act*. The appeal hearing was held before the

Committee on March 13, 2019. This was the first time in the Commission's history that it had heard an appeal. The Appellants were represented by legal counsel.

- [94] The Appellants sought to stay the enforcement proceedings against them under By-law 2017.25 on grounds that included:
- (a) The shorewall inspection findings conducted by the Commission did not justify the extent of the repairs specified in the notices of breach;
 - (b) The Appellants were actively engaged in a process to repair and replace their shorewalls;
 - (c) The default requirement in By-law 2017.25 was for an owner to construct a shorewall based on designs supplied by an engineer retained by the owner, as set out in subsection 4.2;
 - (d) A stay would allow the Appellants to submit engineering permit drawings to the Township just as the Jennings had done in November 2018; and
 - (e) The limited circumstances in which construction must proceed based on designs supplied by the Commission as prescribed by the By-law did not apply to the Appellants.

[95] The Commission reserved its decision. On April 11, 2019, the Commission passed a resolution extending its decision on the appeal hearing by 30 days.

[96] The Commission has never rendered its decision.

Approval of the Conservation Authority

[97] In May 2019, the Lake Simcoe Region Conservation Authority confirmed by correspondence that it had no issue with the proposed use of synthetic sheet piling. However, it advised that the permit application was not complete until such time that the Conservation Authority received written confirmation "from the Township stating that they can approve the new sheet pile wall engineered design."

[98] On May 9, 2019, Jennings attended a Commission meeting and read the Conservation Authority's statement to the Commission. She was then asked to leave for a closed session. The Minutes of the meeting do not reflect any of the information conveyed by Jennings. Within the closed session under "potential litigation matter regarding shorewalls", the minutes record a resolution that legal counsel be invited to attend a special Commission meeting, and that the shorewall appeal hearing decision be extended until further notice due to "ongoing legal consultant negotiations".

[99] On May 14, 2019, the Commission sent letters to the Appellants stating that it was extending the appeal hearing decision until further notice but that the decision would be "forwarded in due course".

[100] On May 16, 2019, the Conservation Authority stopped waiting for the Township's answer and issued a permit to the Jennings for the installation of a new sheet pile wall along the same footprint as the existing concrete shorewall subject to, among other things, municipal by-laws.

Additional Building Permit Applications

[101] In September 2019, the remaining Applicants applied for the building permits needed to replace their shorewalls, which were also prepared and submitted to the building department by T&C. These permits were reviewed and approved by the Conservation Authority in October 2019.

The Township Repeals and Replaces By-law 2017.25

[102] Grellette's evidence is that following the appeal hearing, municipal council and the Commission undertook a review of By-Law 2017.25, which resulted in the passage of By-law 2020.16 as discussed below.

[103] In December 2019, the Township posted a draft by-law on a website that it had just created and which, according to Jennings, most community members would not have known about at the time. Presumably, this is what Grellette has referred to in his affidavit when he said that the public was given the opportunity to provide comment on the draft legislation before it was enacted, as he provided no other details of public review or engagement.

[104] The Phase One Group communicated to as many people in the community as they could about the proposed by-law and let them know that a Township council meeting would be held on January 27, 2020. Roughly 150 people attended. Jennings made submissions to the Township at the council meeting and raised numerous concerns about the proposed by-law and its impact on Lagoon City and Ramara, which received support from those members of the public in attendance.

[105] The following month, on February 10, 2020, the Township repealed and replaced By-law 2017.25 with By-law 2020.16, *A By-Law Regarding the Construction and Replacement of Shorewalls Within the Development Known as Lagoon City*.⁴ As with its predecessor, By-law 2020.16 was passed when roughly two-thirds of Lagoon City residents had not yet returned for the season from their winter residences.

[106] The major changes introduced by By-law 2020.16 were as follows:

- (a) The specifications supplied by the Commission for repair or replacement of the shorewalls became mandatory, including concrete caps and fascia and sheet pile driven to refusal;

⁴ A complete copy of By-Law 2020.16 is attached as Schedule D to these Reasons.

- (b) The Commission must render a decision on the necessity of shorewall repair or replacement within 30 days of an appeal hearing;
- (c) The Commission's decision on the necessity of shorewall repair or replacement is final; and
- (d) An owner of a property abutting a canal is obliged to construct a shorewall within two years of the date of conveyance, even where conveyance occurred before the enactment of the By-law, thereby imposing the standards set by the By-law on a retroactive basis.

[107] The Schedules for By-law 2020.16 were prepared by Tatham. Section 5.3 of By-law 2020.16 provides that all designs and specifications shall be prepared to maintain the general exterior appearances shown in the attached Schedule B, which shows that concrete coping and concrete fascia are mandatory.

[108] Although both Grellette and Collingwood's evidence is that the Schedules developed for By-law 2020.16 allow owners to make use of any material they want as long as the design of the structure is completed and sealed by a licensed engineer, this is obviously far from the truth given the provisions of subsection 5.3. Collingwood admitted on cross-examination that "any material" still required concrete fascia and coping.

[109] Grellette's evidence is that By-law 2020.16 was prepared primarily to address the concerns presented to the Commission in March 2019 at the time of the appeal hearing, and to address any ambiguity that may have existed with respect to the standards for the construction and maintenance of shorewalls contained in By-law 2017.25. His affidavit does not provide any detail about the nature of the "ambiguity".

[110] Grellette's affidavit further states that By-law 2020.16 is similar to its predecessor and is "aimed at providing uniform standards for the construction and maintenance of shorewalls within Lagoon City, while providing instruction as to the type of shorewall that would be acceptable to the Township and the Commission".

[111] Correspondence from the Township's counsel to the Applicants' counsel dated June 1, 2020 advised, on behalf of the Commission, that By-law 2020.16 established new specifications for maintenance of the shorewalls. As a result, any decision arising from the appeal hearing would have no application as a result of its promulgation, as the Commission's jurisdiction to render a decision with respect to By-law 2017.25 had been effectively removed.

[112] At his examination, Collingwood confirmed that the Township or the Commission instructed Tatham that the shorewalls had to have concrete coping and fascia. He agreed that there was no engineering reason for this, nor does it make the shorewall stronger. Instead, the shorewall needs to be stronger to support the weight of the concrete.

Township Passes By-law 2020.57

- [113] A few months after enacting By-law 2020.16, on July 27, 2020 the Township passed By-law No. 2020.57⁵, a by-law to amend certain sections of By-law 2020.16.
- [114] By-law 2020.57 purports to transfer the powers of the Commission to the Township. It requires maintenance or repair of shorewalls to be in a manner satisfactory to the Township, provided that the requirements of the Township do not exceed the specifications set out in By-law 2020.16. Notice of the required work is to be given by the Township. Enforcement is to be carried out by the Township.
- [115] Perhaps most significantly, By-law 2020.57 adds a new section to By-law 2020.16 for the purpose of establishing an Appeals Committee appointed by Council. As mandated by By-law 2020.16, the decision of the Appeals Committee is final.

Freedom of Information Request

- [116] The Applicants decided to submit a request for records under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (“*MFIPPA*”) to shed light on the decision-making process. The original application was made on August 14, 2020.
- [117] The Township provided access to the publicly available records on May 7, 2021. The fee to process this request was \$1,470.
- [118] However, these records did not include any of the communications sent on behalf of the Commission exclusively from or to personal email accounts, which obviously exist.
- [119] It is Jennings’ evidence that the records received from the Township confirmed the Applicants’ suspicions that the Township had been directing the Commission, and that the activities of both the Township and the Commission have been focused on a pre-determined goal of a concrete aesthetic for the shorewalls.
- [120] The records also confirm that the use of personal emails among the Commission members was a habitual occurrence. The emails that were produced were obtained primarily because Brittain used her official Township of Ramara email address.
- [121] The information garnered through the *MFIPPA* application confirmed that concrete has been the Commission’s overriding concern. In an email to Brittain on November 8, 2018, Collingwood stated that the design submitted by the Phase One Group did not meet the aesthetic requirements of By-law 2017.25 since they did not include concrete fascia. The email also describes the process for peer review of the design drawings by Tatham, by which Tatham would generate comments after doing an engineering technical review and a review for compliance with the By-law. He noted that the review may show that the

⁵ A copy of By-law 2020.57 is attached as Schedule E to these Reasons.

design is acceptable, and the Applicants can proceed with the permit application, or there may be items the Applicants must address and resubmit for second review. Depending on the scope of comments, Brittain was told that she may then have to go to the Commission for further review/discussion.

- [122] On November 8, 2018, in an email among Commission members and Brittain, Commissioner Kal Johnson referred to sending the notices of default to the four Appellants “ASAP”, stating that he had told the Applicants to form a group to work with a contractor to get a reduced price to repair their shorewalls, not “form a group to find a new way to build shorewalls”. He also stated that if the plans that the Appellants intended to present to the Township’s engineers for review were the plans that the Commission had been “saying no to from the beginning”, then the Commission was wasting its time “again”.
- [123] He concluded by saying that he thought that “we have all been extremely reasonable with this group” and that he was “personally sick and tired of dealing with this”. The notices of default were sent out five days later.
- [124] On November 10, 2018, in an email chain among Commission members and Brittain, Commissioner Kal Johnson referred to the design drawings submitted by the Appellants and stated that “if no concrete facings on them they will not pass.” The Jennings had submitted their permit application on November 1, 2018, and were to hear nothing further about it until the following year, when they were told by the Chief Building Official that the Commission had told him not to issue it.
- [125] On November 12, 2018, in an email chain among Commission members and Brittain, Commission Chairman Billinger suggested that the Commission must now consider the shorewall design drawings submitted by the Appellants because someone “dropped the ball” and did not send the default notices more quickly. This email suggests that commissioners seemed to know that they were in a difficult situation at that point.
- [126] In a December 18, 2018 email from Commissioner Robert Poyntz to the other commissioners, Poyntz stated that he does not like the alternate design and “will never give approval” for its use in Lagoon City. He expressed the opinion that the Commission should be tabling a motion to reject the design on the grounds that “the continuous run of shore wall [would] be broken” and based on his belief that the shorewall design would compromise existing shorewalls.
- [127] On April 5, 2019, Brittain circulated an email to commission members stating that the building department was looking to her for direction on permit applications for one of the properties that had submitted design drawings. Her email stated that, in the interim, the building department was “holding onto the application”, although Brittain noted that from the discussion held at the Special Meeting on March 25, she did not believe that “there was anything the Commission can do at this point to pause this”.
- [128] That same email attached the Commission’s draft decision from the appeal hearing, which concluded that the Commission did not need to proceed with the work set out in the notices

of default, as the Appellants intended to complete the necessary work themselves within a reasonable amount of time “and in compliance with all applicable law”.

- [129] On May 14, 2019, Brittain and the commissioners discussed and agreed to an indefinite extension for the appeal decision.
- [130] These months of inaction on the part of the Commission, the evidence reveals, was partly due to the fact that they were waiting for legal advice on the situation and, as Brittain would convey to the Respondents’ current counsel on June 11, 2019, the Commission was “displeased with the legal recommendations from the previous law firm Ramara contracted with”.
- [131] In her email of June 11, 2019, Brittain explained the history of the matter and set out the Commission’s position on the alternate shorewall design put forth by the Phase One Group. She stated that “[t]he members of the LCPWC [Commission] initially were not in favour of the design as it is made of plastic rather than concrete. The members want a unified design for shorewalls – much like a curb in a neighbourhood. It’s been a very hot topic”.
- [132] The email expressed that the Commission did not want the Jennings’ shorewall design to proceed, and that the Chief Building Officer had not issued the permit because he knew that the Commission did not want it issued. In the same email, Brittain expressed the opinion that she did not think that “we” can bar the permit from being issued “with the current state of By-law 2017.25”. She noted that at the appeal hearing the lawyer representing the Appellants “presented a case on behalf of the four homeowners and, to be quite blunt, ripped By-law 2017.25 apart.” Brittain sought advice on how to amend By-law 2017.25 “to give authority” and remove “loop-holes”, how to proceed with the four properties that had gone through the appeal process, how to proceed with the “alternate design group”, and how to deal with the Phase One property owners who were requesting to have their shorewall inspection fee reimbursed, as By-law 2017.25 did not authorize the Committee to charge such a fee.
- [133] In a November 1, 2019 email chain between Township clerk Cathy Wainman and the members of the Commission, Wainman asked for direction about what to do with the shorewall permit applications received, noting that two applications are for steel walls and three applications are for vinyl walls. She wrote:
- The CBP confirms that he could issue permits for the two steel walls if the concrete cap and fascia were included. The contractor is arguing that the people do not want the concrete on their walls and since these are engineered drawings it should not be a requirement.
- [134] Chairman Billinger suggested that she not reply until the Commission had received legal advice.
- [135] On February 8, 2020, Councillor David Snutch wrote to his fellow councillors stating that he did not support the proposed by-law and more information on cost was needed before the Township could enforce concrete caps and fascia “for cosmetic purposes only”. He

expressed his view that concrete would be nice, but not at the extra cost. He inquired about the increased cost per foot for the concrete. He noted that no one had yet been able to supply him with that number.

- [136] On February 25, 2020 (notably 15 days after the Township had passed By-law 2020-16), Commissioner/Councillor Johnson obtained a shorewall quote from the Phase One Group's contractor. The quote sets out options for steel or synthetic sheet piling, with and without concrete capping and fascia. The option for concrete capping and fascia roughly doubled the cost of the quote.

Building Permit Denied

- [137] On October 29, 2020, the Jennings received correspondence from the Township's infrastructure department stating that their permit was deemed incomplete under the New By-law.

Expert Engineering Evidence

- [138] Kohlberg's qualifications to provide expert evidence to the court were not challenged.
- [139] His *curriculum vitae* indicates that he has 39 years' experience in all phases of coastal and marine engineering projects. He is licensed as an engineer in both Ontario and Nova Scotia. The overview states that throughout his career, Kohlberg has focused on feasibility and integrated planning and design studies, final design and construction supervision and administration, environmental assessment, and regulatory approvals. He has worked on waterfront projects, to name a few locations, extensively throughout the Great Lakes system, Lake Winnipeg, Lake Simcoe, Lake Nipigon and the Caribbean. He is currently the Principal of W. F. Baird and Associates, Coastal Engineers Ltd. located in Oakville.
- [140] Kohlberg's expert report is dated December 3, 2021, and he has signed an Acknowledgement of Expert's Duty.
- [141] In examining By-law 2017.25, Kohlberg concluded that the sealed designs in the Schedule B and Schedule C drawings are not applicable if the design of the shorewall is completed by a professional engineer as set out in section 4.2.
- [142] In his review of the Schedules B and C drawings, he reviewed the functional purpose of each of the components and concluded that the concrete fascia panels do not serve a primary structural purpose for the shorewall, being simply attached to the surface of the shorewall by mounting bolts. The concrete fascia panels are included for appearances or cosmetic purposes. With respect to the requirement for tie rods and deadhead anchors, he noted there is no rational explanation provided as to why alternative, possibly better anchor designs, in accordance with accepted engineering practice, would not be permitted.
- [143] Kohlberg notes that Schedule B of Bylaw 2020.16 contains three drawings by Tatham that present schematic illustrations of the general nature of the shorewalls. The illustrations are not detailed, sealed engineered design drawings for shorewalls. This was also Mr.

Collingwood's evidence, which was that these drawings serve only to illustrate an example of a typical shorewall that could be implemented.

[144] Kohlberg referenced the estimate prepared by T&C dated March 26, 2020, which estimated that the cost of the concrete coping and fascia increases the cost of the shorewall by about 50%. Kohlberg's view is that the inclusion of cosmetic concrete fascia panels bolted to the front of a shorewall unnecessarily complicates the wall design and introduces additional connections that could potentially be a future problem due to breakage or corrosion.

[145] In summary, he has provided the following opinions:

- (a) By-law 2020.16 contains some requirements that are not rationally connected to accepted engineering design practice requirements for a standard anchored vertical bulkhead shorewall, including the mandatory requirement to use a specific concrete deadhead anchor arrangement, the mandatory requirement for a concrete fascia panel for cosmetic purposes that substantially increases the cost of the shorewall to the owner, as well as the mandatory requirement that sheet piling be driven to refusal at bedrock unless a site specific geotechnical report has been completed.
- (b) The designed shorewall drawings prepared and sealed by Steimer are in compliance with the shorewall engineering design requirements of both By-law 2017.25 and By-law 2020.16. The drawings followed the engineering design requirements specifying that the design be completed and sealed by a professional engineer licensed in the Province of Ontario and were supported by a geotechnical engineering report as required.
- (c) By-law 2020.16 does not preclude the use of vinyl sheet piling. Alternative materials are permitted if approved by a professional engineer.
- (d) The illustrative shorewall drawings in By-law 2020.16 do not indicate that the concrete fascia panels are required for the structural integrity of the shorewall. The concrete fascia panels appear to be included simply for appearances or cosmetic purposes. Addition of the precast concrete fascia panels to a shorewall increase the cost of the shorewall to the owner above and beyond the cost necessary to provide a shorewall as defined in By-law 2017.25 and By-law 2020.16.

[146] During his submissions, the Applicants' counsel referred to an expert report authored by Chris Metaxas of GEI Consultants, engaged by the Respondents. However, the report was not included in either party's record. When the court inquired about whether it was being relied on, the Respondents' counsel stated that he would not be referring to it. I draw the inference that the Metaxas report does not advance the positions taken by the Respondents.

Issues

[147] The parties submit the following issues to this court for determination:

- (a) What is the test to quash a municipal by-law?

- (b) Is the New By-law illegal because the subject matter of the New By-law is not within the Township's powers?
- (c) Is the New By-law illegal because it was passed in bad faith?

The Law

Test for Quashing a By-law

- [148] By-laws enacted by municipal governments are presumed to be valid: *Clublink Corporation ULC v. Oakville (Town)*, 2019 ONCA 827, 148 O.R. (3d) 558, at para. 31. The onus is on the Applicants to prove the basis upon which they should be quashed.
- [149] Section 273(1) of the *Municipal Act* provides that the Superior Court of Justice may quash a by-law of a municipality in whole or in part for illegality. While this power is discretionary, the discretion must be exercised judicially and in accordance with established principles of law: *London (City) v. RSJ Holdings Inc.*, 2007 SCC 29, [2007] 2 S.C.R. 588, at para. 39.
- [150] "Illegality" is a broad term that encompasses any non-compliance with the law and is determined on a standard of correctness: *RSJ Holdings*, at paras. 35, 37.
- [151] Where there is a total absence of jurisdiction for a by-law, a court acting judicially will quash it. But illegality is not strictly confined to matters of jurisdiction. A failure to comply with statutory procedural requirements may also provide sufficient grounds for quashing: *RSJ Holdings*, at para. 40.
- [152] Overall, a number of factors may inform the court's exercise of discretion including, the nature of the by-law, the seriousness of the illegality committed, its consequences, delay, and mootness: *RSJ Holdings*, at paras. 39-40.
- [153] Bad faith is also a ground for quashing a by-law: *Clublink*, at para. 22; *Grosvenor v. East Luther Grand Valley (Township)*, 2007 ONCA 55, 84 O.R. (3d) 346, at para. 39.
- [154] The exercise is not for the court to substitute its own views of what it believes to be in the best interest of the public for that of municipal council: *Municipal Parking Corp. v. Toronto (City)* (2009), 314 D.L.R. (4th) 642 (Ont. S.C.), at para. 33.

Illegality

- [155] Section 5(3) of the *Municipal Act* provides that municipal power shall be exercised by by-law unless a municipality is specifically authorized to do otherwise.
- [156] However, a municipality's authority in making by-laws is limited to the powers provided to it by the provincial legislature. By-laws are subordinate legislation and any that are inconsistent with the general provincial legislation "are void and of no effect, or else

superseded to the extent that the legislature has acted”: *Wpd Sumac Ridge Wind Inc. v. Kawartha Lakes (City)*, 2015 ONSC 4164, 43 M.P.L.R. (5th) 91, at para. 25.

[157] As stated at paragraph 19 of *Wpd Sumac*:

The question is not whether the by-laws fall within the scope of the Municipality’s authority to regulate, but rather whether the by-laws conflict with a provincial instrument.

[158] A court must therefore look to the purpose and wording of the enabling legislation when deciding whether, and the extent to which, a municipality has been empowered to pass a certain by-law. In carrying out this exercise, the modern approach to statutory interpretation is that “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 [the legislator]”: *Clublink*, at para. 34, citing *Rizzo & Rizzo Shoes Ltd. (Re)*, [1988] 1 S.C.R. 27, at para. 21.

[159] As stated by Doherty J.A. in *Barrick Gold Corp. v. Ontario (Minister of Municipal Affairs and Housing)* (2000), 51 O.R. (3d) 194 (C.A.), at para. 64:

While individuals may order their affairs to comply with the letter, if not necessarily the spirit, of legislation, municipalities must bring themselves within both the spirit and the letter of the empowering provincial legislation. A by-law that finds its statutory justification in specific provincial legislation must be consistent with both the policy and the language of that legislation. A by-law that offends the policy underlying the operative statute is beyond the powers of a municipality and is, therefore, illegal within the meaning of s. 136 of the Municipal Act.

[160] The court must not second-guess the municipality as to whether the by-law will be effective in achieving the intended purpose or purposes: *Toronto Taxi Alliance Inc. v. Toronto (City)* (2005), 77 O.R. (3d) 721 (C.A.), at para. 46; *Cash Converters Canada Inc. v. Oshawa (City)*, 2007 ONCA 502, 86 O.R. (3d) 401, at para. 23.

[161] Where the purpose for which a by-law is enacted is to accomplish indirectly an object that is beyond council’s authority, it is illegal and may also amount to bad faith: *Grosvenor*, at para. 39.

[162] As stated by Rogers in the *Law of Canadian Municipal Corporations*, 2nd ed. (Toronto: Thomson Reuters Canada, 1988) (loose-leaf 2024-Rel. 11), at §24.31:

A by-law which is ostensibly within the authority of a council to enact may be set aside or declared invalid if its real purpose and intent is to accomplish by indirect means an object which is beyond its authority... Hence, the court must always “in examining a by-law, see that it is passed for the purpose allowed by the statute and

that such purpose is not resorted to as a pretext to cover an evasion of a clear statutable duty”.

- [163] Council must observe the rules of natural justice by ensuring procedural fairness in its decision-making. This includes providing adequate notice, appropriate disclosure, and a meaningful right to be heard: *Fortin v. Sudbury (City)*, 2020 ONSC 5300, at para. 103.
- [164] When a municipal government improperly acts with secrecy, the democratic legitimacy of its decision is undermined. Even when those decisions are *intra vires*, they are less worthy of the deference that courts must show to the democratic decision-making process of elected municipal officials: *RSJ Holdings*, at para. 38.

Bad Faith

- [165] Section 272 of the *Municipal Act* provides that a by-law passed in good faith under any act shall not be quashed or open to review, in whole or in part, by the court because of the unreasonableness or supposed unreasonableness of the by-law.
- [166] By-laws are presumed to have been enacted in good faith. An applicant bears the onus of establishing bad faith, and it is a high burden to meet: *Seguin (Township) v. Hamer*, 2014 ONCA 108, at para 5.
- [167] As stated by Southin J.A., “courts should be slow to find bad faith in the conduct of democratically elected representatives acting under legislative authority, unless there is no other rational conclusion”: *MacMillan Bloedel Ltd. v. Galiano Island Trust Committee* (1995), 10 B.C.L.R. (3d) 121 (C.A.), at para. 178, cited in *Uukkivi v. Lake of Bays (Township)* 2004 CarswellOnt 4494 (S.C.), at para. 32.
- [168] In *Toronto Taxi Alliance Inc. v. City of Toronto*, 2015 ONSC 685, 33 M.P.L.R. (5th) 103 (“*Toronto Taxi (ONSC)*”), at para. 100, Stinson J. summarized bad faith to mean:

In the words of Laskin J.A. in *Equity Waste Management* (at para 61): “[b]ad faith by a municipality connotes a lack of candour, frankness and impartiality. It includes arbitrary or unfair conduct in the exercise of power to serve private purposes at the expense of the public interest.” When a Council acts in bad faith, it has “acted unreasonably and arbitrarily and without the degree of fairness, openness and impartiality required of a municipal government.” (*Re H.G. Winton Ltd. and Borough of North York* (1978), 1978 CanLII 1566 (ON SC), 20 O.R. (2d) 737 (Div. Ct.), at para. 21).

- [169] As noted above, in *Equity Waste Management of Canada Corp. v. Halton Hills (Town)*, (1997) 35 O.R. (3d) 321 (Ont. C.A.), at p. 340, the Ontario Court of Appeal adopted the following definition of bad faith:

Bad faith by a municipality connotes a lack of candour, frankness and impartiality. It includes arbitrary or unfair conduct and the

exercise of power to serve private purposes at the expense of the public interest.

- [170] Certain “badges” or indicia of bad faith might not individually constitute bad faith, but cumulatively may rise to such a level: *Toronto Taxi (ONSC)*, at para. 106. Such indicators of bad faith include: “questionable timing; decisions made under false pretenses; improper motives; lack of notice; the usual practices and procedures are set aside; the parties most affected are kept in the dark; or the law singles out one individual or property”: *Toronto Taxi (ONSC)*, at paras. 106, 108; *Fortin*, at para. 175.

Discussion

Illegality

- [171] The governing *Mara Act* established the limits of the Township’s authority with respect to any lands that are conveyed to it by the owners of land abutting a canal, specifically the easement on which the shorewalls were constructed or to be constructed, maintained, and repaired, and the adjacent waterway. The powers granted to the council under s. 2(1) of the *Act* include the power to manage, maintain, regulate and control any land or easement conveyed to it.
- [172] The preamble to the *Mara Act* notes that one of the primary purposes for its enactment is the establishment of the local board, referenced in s. 3 as the Lagoon City Parks and Waterways Commission. As stated in s. 3, the role of the Commission is to manage, maintain, regulate and control lands and easements conveyed.
- [173] While the language in s. 3 regarding council’s authority to pass a by-law to establish the Commission is permissive, a reading of the *Mara Act* in its entirety leads to the conclusion that the Commission was intended to be integral to the governance of Lagoon City. The *Mara Act* details the governance structure of the Commission, including requiring that it consist of three members of the public who are owners or tenants of lands abutting a canal, and details the procedural requirements of the Committee’s business, including annual reporting and auditing requirements.
- [174] While by-laws respecting shorewalls are for council to enact, the Committee is to exercise the powers granted under s. 7(3) where an owner fails to construct or maintain a shorewall in accordance with a by-law. These powers are significant, as they allow the Commission to construct or repair the shorewall at the owner’s expense, subject to it following the procedures required by the *Act*.
- [175] There is nothing in the *Mara Act* that authorizes the Township or the Committee to demand that hundreds of residents shoulder the cost of concrete fascia and caps on shorewalls for purely aesthetic reasons. The shorewalls exist for the primary purpose of preventing erosion between the lands and the canals.
- [176] The importance of the Commission cannot be understated. As the evidence on this application shows, shorewalls are an integral part of Lagoon City, and their design and

repair require specialized expertise. In its wisdom, the Legislature in enacting the *Mara Act* envisioned a committee which, while its members would not be required to have specialized expertise, would be focused on the shorewalls as part of the land or easements conveyed to the Township. The Commission is and was intended to be a separate and independent body from the Township. To recognize that the management, maintenance regulation and control of the shorewalls (and other lands conveyed) should be carved out of the Township's other business, the Township was authorized to delegate any or all of those powers to the Commission to under s. 5(1) of the *Mara Act*.

[177] Recognizing this key feature of the *Mara Act*, and the importance of the Commission to Lagoon City as a whole, this is exactly what the Township did when it enacted earlier by-laws that gave enforcement powers over shorewalls to the Commission. For example, at s. 7.1 of By-law 97.54, the powers delegated to the Commission were set out as follows:

7.1 In the event that any owner fails to construct or maintain the portion of shorewall for which that owner is responsible in a state of repair satisfactory to the Lagoon City Parks and Waterways Commission, the said Commission may exercise its powers and privileges set out in the Act to compel the said owner to construct or repair the shorewall for which he or she is responsible, and, if necessary, in accordance with the provisions of the Act, to perform the said construction or repair and to collect the cost of so doing in accordance with the provisions of the Act.

[178] The Act referred to in s. 7.1 is the *Mara Act*, as set out in the preamble to By-law 97.54. This same provision was included in By-law 2020.16.

[179] The Legislature saw fit to ensure that an owner who objected to the necessity of a repair, or its cost, had an opportunity to be heard by the Commission. Importantly, the *Mara Act* also allows for a right of appeal if the Commission rejects the owner's submissions. As earlier outlined, the issue of the cost of repair is a central focus of the provisions in the *Mara Act*, both for the Commission and the court of revision hearing an appeal. Subsections 7(3)(a) and (b)(i) of the *Mara Act* require that the Commission include in the notice both the nature of the work proposed and *an estimate of its cost*, and to give the owner the opportunity to make representations to the Committee not only on the necessity of repair, but also the *cost of construction or repair of the proposed work* (emphasis added).

[180] The Committee is also required under subsection 7(5) to hold off on taking any further steps on the shorewall in question until an owner has exhausted their appeal rights.

[181] I find that part of the Committee's purpose and mandate given under the *Mara Act* was to give due consideration to the cost of building, maintenance, and repair of shorewalls. The obvious financial interest of the owners was recognized by giving three out of five seats on the Committee to owners or tenants who would be affected by the Committee's decisions.

- [182] However, By-law 2020.16 stripped away certain procedural and substantive rights provided by the *Mara Act*.
- [183] The first of these is found in s. 3.1. Pursuant to s. 3.1(a) of By-law 2020.16, the Commission is to provide notice to the owner outlining *the nature of the work required to repair or replace the shorewall* (emphasis added). In the event of a notice of repair or replacement being sent by the Commission to an owner, s. 3.1(b) provides that the Commission will provide the owner the opportunity to make oral or written representation to the Commission *as to the necessity of repair or replacement of the shorewall* (emphasis added). Absent from these provisions is any mention of cost or expense, which I find to have been a deliberate omission, and is contrary to the wording in the *Mara Act*.
- [184] As indicated, I find that this omission was deliberate. By the time that By-law 2020.16 had been enacted, the Commission and the Township had received a significant amount of information about the increased cost of the concrete coping and fascia that as much as doubled the quotes provided for the Applicants' proposed material. The Respondents had been hearing about the Phase One Group's concerns about cost for some time. Several of the questions posed by Ken Jennings related to the Commissions' consideration of cost to owners, and only the month before Jennings' deputation had been presented at the Township council meeting. The Respondents were aware that the type of design being proposed by the Applicants had a substantial impact on the cost of construction or repair of the shorewalls. By deleting any reference to cost, the Township attempted to make the expense a moot consideration in the analysis. Even in the face of the email from Councillor Snutch that raised the issue of increased cost, the Township passed By-Law 2020.16 and thereby attempted to make the amount of the associated expense irrelevant.
- [185] The purported authority to ignore cost given to the Commission by By-law 2020.16 is further underscored by s. 3.1(c), which provides that the Commission will give judgment of their decision within 30 days as to the *necessity of the identified repair or replacement of the shorewall* (emphasis added).
- [186] There is no rational connection between the terms of the *Mara Act* and the requirement for a concrete façade. Again, the provisions of the *Mara Act* indicate that cost is a valid consideration for the Commission. All available engineering evidence, which I accept, is that there is no valid engineering reason for the concrete, and that, in fact, it is a detriment. It requires corrosive components and reinforcement to support its added weight and contributed to the degradation of some of the walls. This was made clear to the Commission as early as 2016, when it received Tatham's initial report. Concrete adds additional cost for nothing but cosmetic reasons. The requirement of concrete façades imposed by the New By-law is not necessary in the public interest.
- [187] The second procedural and substantive right that was removed by By-law 2020.16 was the process of appeal. The *Mara Act* mandates a robust appeal process. In contrast, By-law 2020.16 provides, at s. 3.1(d):

After affording the Owner an opportunity to make submissions and having released its decision, the decision of the Commission with respect to the necessity of any repair or replacement of the shorewall is final.

[188] Again, the finality of the Commission’s decision is contrary to the governing *Mara Act*. The amending by-law, By-law 2020.57, goes even further, removing all powers from the Commission set out in s. 3.1 of By-law 2020.16, and transferring them to the Township. By-law 2020.57 removes all references to the Commission that were contained in By-law 2020.16.

[189] The Commission has sole jurisdiction to exercise the powers that are granted to it under the *Mara Act*, not the Township. The New By-law effectively guts the powers of the Commission and transfers all its former authority to the Township.

[190] The preamble to By-law 2020.57 states, in part:

AND WHEREAS the Council of the Corporation of the Township of Ramara deems it necessary to amend Bylaw 2020.16 to provide for the Township to administer the shorewall bylaw and to provide for appeals to the bylaw to the Township’s Appeals Committee as opposed to the Lagoon City Parks & Waterways Commission.

[191] The Township has the clear authority under s. 2(c) of the *Mara Act* to enact by-laws for the purpose of managing, maintaining, regulating, or controlling any land or easement conveyed to them, including the shorewalls. However, it must not enact any by-law for a collateral purpose. The Township cannot enact a by-law for a purpose other than that envisaged by its empowering statute. In this case, I find that the Township passed the New By-law so that Council and the Committee’s desire to ensure that concrete fascia and capping was a required design element be achieved, regardless of the cost to the owners, and to remove from the Committee any decision-making authority to avoid having to render a decision on the outstanding appeal. The Township did so knowing that former By-law 2017.25 would require the Committee to grant the appeal in favour of the Appellants, and that the permit applications would likewise have no basis to be rejected unless the existing By-law was changed.

[192] Mr. Ewart made the argument that the actions of the Committee are to be distinguished from the conduct of Council. Respectfully, that cannot be done in the circumstances of this case, as there is too much evidence that the Township’s decision to pass the New By-Law was done in counterpart with the Commission’s wishes.

[193] Grellette’s clear evidence, at paragraph 28 of his affidavit, is that following the appeal hearing in March 2019, “Municipal Council and the Commission undertook a review of By-law 2017.25 which resulted in the passage of By-law 2020.16 on February 10, 2020”.

[194] If that were not enough, the information contained in Brittain’s email to Mr. Ewart dated June 11, 2019, providing him with the background to this dispute, leaves no doubt about

the intention of the Commission and the Township. She wrote that the Commission is looking for recommendations on how to amend By-law 2017.25 “to give authority and to remove ‘loopholes’”, because, as she also wrote, the current state of By-law 2017.25 did not prevent the Committee from barring the shorewall building permit (the only application submitted at that point being the Jennings). She admitted that the Chief Building Official had not issued the permit because he knew that the Commission did not want it issued. The content of this email also left no doubt about why that was the case: “The members of the [Committee] initially were not in favour of the design as it is made of plastic rather than concrete. The members want a unified design for shorewalls - much like a curb in a neighbourhood”.

- [195] The blending of the Commission and Council is dictated by s. 4 of the *Mara Act*, which provides that the Commission must be comprised of two members appointed from council and three owners. Minutes of a Commission meeting held on November 23, 2018 indicate that the two positions allocated to Council were filled at that time by the Deputy Mayor, John O’Donnell, and Ward 5 Councillor, Kal Johnson. The evidence that was uncovered from Jennings’ *MFIPPA* application shows that Johnson was a particularly vocal opponent of the Applicants’ permit application.
- [196] I note also that the notices that were sent out to the Appellants by the Commission were sent on the Township’s official letterhead, and that Brittain’s administrative position serves both Council and the Committee.
- [197] The serious impact and financial consequences of the New By-law required that the Township be scrupulously transparent about what it was doing, and to allow full opportunity for public participation. As Jennings’ evidence points out, By-law 2020.16 was passed before the May long weekend, when about two-thirds of Lagoon City’s population had not returned to their seasonal residences. That was also the case with By-law 2017.25. While By-law 2017.25 is not in issue, there is a trend that demonstrates a lack of democratic fairness. By-law 2017.25 was passed even before the Committee’s minutes had been published from the meeting during which it had discussed the by-law amendments. There was little possibility that members of the public could have been adequately informed of Council’s intentions.
- [198] Significantly, there is no evidence that there was any advance notice of By-law 2020.16 beyond posting it on a website that had just been created. The Respondents’ evidence does not dispute this fact. Although Grellette’s affidavit baldly refers to the public being provided with an opportunity to make comment on the draft legislation before its passage, no explanation was provided about how that process took place. It seems that it was the Applicants and other members of the Phase One Group that circulated the word about the proposed by-law, not Council or the Committee. A large percentage of seasonal residents would not have been present at the relevant time in January and February 2020, when deputations and submissions were being made to the Township prior to By-law 2020.16 being enacted on February 10.

- [199] That the Township did not wait until it had further information about the increased costs of adding concrete to the synthetic sheet piling underscores its agenda. In his email sent just two days before the enactment of By-law 2020.16, Councillor Snutch questioned why council could not delay until they had accurate numbers regarding the extra cost of enforcing a concrete top and fascia for cosmetic purposes only. After receiving a response from Councillor/Commissioner Johnson that was not responsive to his question, Councillor Snutch sent a further email that said “I am only looking for the answer to one question. How much extra per foot to have a concrete slab and facing install for cosmetic purposes only”.
- [200] There is no evidence that his question was answered, until after By-law 2020.16 was enacted and T&C’s quotation, which is noted to have been prepared specifically for Johnson, showed an *additional* cost of \$34,000 for the addition of concrete for every shorewall.
- [201] This further evidence leads to the inescapable conclusion that the Respondents were prepared to ignore the issue of cost and wanted the By-law to be pushed through. And instead of reconsidering By-law 2020.16 after they had that final confirmation of increased cost, they further encroached on the Applicants’ rights by passing the amending by-law. By that time, the evidence shows that the building department was looking for direction, the Applicants and Steiner were continuing to press for an answer, and the Respondents were looking for a way to have the shorewall building permits rejected due to by-law non-compliance.
- [202] The Respondents’ actions are lacking in the impartiality required of elected officials. Cloaked in the mantle of their public office, both Committee and Council members passed the New By-law to meet their own goals of a certain aesthetic, and to silence the opposition received from the Phase One Group.
- [203] In conclusion, both By-law 2020.16 and 2020.57 should be quashed. The Township acted outside of its authority in enacting the By-laws for purposes at odds with those outlined in the *Mara Act* for enacting by-laws, to accomplish an improper purpose. The significant deference that should be afforded to decisions of municipal council should not apply here. Further, the need for deference is eroded by the manner in which By-law 2020.16 was enacted, with elements of procedural unfairness that undermine its democratic legitimacy.
- [204] The expert evidence provided by Kohlberg is that the designed shorewall drawings prepared and sealed by Steimer comply with the shorewall engineering design requirements of By-law 2017.25. The Respondent’s have offered no contrary evidence. Further, the Conservation Authority has granted its permission. There is no reason, on the evidence, to not grant the Applicants’ request to compel the Township to grant the shorewall permits.

Bad Faith

[205] If I am wrong in that reasoning or conclusion, I would nonetheless quash the New By-law due to it being enacted in bad faith.

[206] There are multiple “badges” of bad faith on the part of the Respondents demonstrated by the evidence. Together, these indicia collectively lead to the inescapable conclusion that the Respondents have acted unfairly, oppressively, and with bias to satisfy the aesthetic preferences of some members of Council and the Committee, at what will be a significant cost to the some 876 shorewall owners within Lagoon City.

[207] Without unduly repeating the evidence, the hallmarks of bad faith that exist here are:

- (a) the collusion between members of the Council and the Commission to achieve their members’ mutual goal of a certain aesthetic;
- (b) issuing notices of default to some of the Applicants when they were actively engaged in a process to remediate their shorewalls;
- (c) enacting a by-law containing requirements for shorewalls that had no basis in sound engineering practices, while being aware of professional advice to the contrary;
- (d) enacting a by-law that was detrimental to the public’s financial interest and without consideration of that cost, contrary to the intent of the *Mara Act*;
- (e) failing to give due process to the Applicants by prohibiting the professionals engaged by the Phase One Group to present information about their shorewall design to the Committee;
- (f) interfering with the independence of another municipal officer, namely the chief building officer;
- (g) colluding to withhold the appeal decision for an indeterminate time;
- (h) spending public funds on legal counsel and advice with the pre-determined objective of achieving personal preferences of the elected officials;
- (i) enacting By-law 2020.16 on the pretense that it resolved “ambiguity” in By-law 2017.25 when no such ambiguity existed;
- (j) proactively creating by-laws with the goal of defeating the Applicants’ shorewall building applications;
- (k) proactively enacting a by-law with the goal of circumventing the need to issue a decision to the Appellants, which would otherwise have ended the Commission’s enforcement proceeding; and

- (1) enacting By-law 2020.16 with questionable timing and a questionable amount of public notice.

Ruling

[208] For the foregoing reasons, this court orders and declares:

1. Township of Ramara By-law 2020.16 *A By-law Regarding the Construction and Replacement of Shorewalls Within the Development Known as Lagoon City* as amended by By-law 2020.57 (the “New By-law”) is contrary to provincial statute.
2. The New By-law was enacted in bad faith.
3. The New By-Law is hereby quashed on the basis that it is contrary to provincial statute and enacted in bad faith.
4. By-law 2017.25 is hereby in full force and effect.
5. The Township shall forthwith grant the applications submitted by the Applicants for permits to replace the shorewalls abutting their respective properties; and
6. The Commission shall forthwith render a decision as to the necessity of repair or cost of construction or repair of the proposed works.

Costs

[209] The Applicants are presumptively entitled to the costs of this application as the successful parties.

[210] If the parties are unable to agree upon the issue of costs within 20 working days from the date of release of these Reasons, they may make submissions in writing. The Applicants’ submissions are due on January 31, 2025, the Respondents’ on February 14, 2025 and any reply, if necessary on February 19, 2025. These deadlines may be extended by mutual agreement of counsel, with notice to the court through my judicial assistant at BarrieSCJJudAssistants@ontario.ca.

[211] Written submissions are limited to 5 double-spaced pages, plus a Bill of Costs or Costs Outline. All authorities relied on are to be hyperlinked in the document or uploaded to Case Center with a tabbed (i.e., hyperlinked) index. The submissions are to be filed with the

court, with a copy emailed to my judicial assistant, in addition to being uploaded to Case Center.

The Honourable Madam Justice S.E. Healey

Released: December 30, 2024

SCHEDULE "A"

CHAPTER Pr21

An Act respecting the Township of Mara

Assented to November 4th, 1986

Whereas The Corporation of the Township of Mara considers it desirable that it be given power to acquire real property, including easements in or over real property, that is being used, or intended to be used, for private parks, foot-bridges, foot-paths and waterways; that it is also desirable that the Corporation be given the power to establish a local board to manage, maintain, regulate and control the property so acquired; and whereas the Corporation desires to apportion the cost of the maintenance and regulation among the properties obtaining a benefit therefrom; and whereas the Corporation hereby applies for special legislation for such purposes; and whereas it is expedient to grant the application;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Commission” means the “Lagoon City Parks and Waterways Commission” established under subsection 3 (1);

“Corporation” means The Corporation of the Township of Mara;

“council” means the council of the Corporation;

“private park” means an area of land or beach for the recreational use of those persons referred to in subsection 2 (2);

“shorewall” means a building improvement on a lot or block on a registered plan of subdivision or registered reference plan abutting a waterway and constructed to replace the natural shore at the rear or side of the lot or block;

“waterway” means a lagoon, water channel, canal or passage-way for boats including the shore and bed thereof and including any bank of land lying between the shore and the

abutting boundary of any lot or block shown on a registered plan of subdivision or registered reference plan.

By-laws respecting acquisition of lands

2.—(1) The council may by by-law authorize the Corporation to,

- (a) accept conveyances of land and easements in or over land, on a registered plan of subdivision or registered reference plan used or intended to be used for or in connection with a network of waterways and may include private parks, foot-bridges, foot-paths or any of them;
- (b) enter into agreements respecting any conveyance of land or easement under clause (a) and the maintenance thereof;
- (c) manage, maintain, regulate and control any land or easement conveyed under clause (a); and
- (d) provide that the owner of land abutting a waterway owned by the Corporation has the exclusive right to moor boats to the shorewall appurtenant to the owner's land without charge.

Restriction on use

(2) The use of the land conveyed to the Corporation under clause (1) (a) is restricted to those persons contributing to the maintenance thereof under subsection 8 (1) and their tenants, guests or invitees.

Commission established to manage lands

3.—(1) If land or easements are conveyed to the Corporation under clause 2 (1) (a), the council may by by-law establish a body corporate to be known as the "Lagoon City Parks and Waterways Commission" to manage, maintain, regulate and control lands and easements conveyed.

Local board R.S.O. 1980, c. 303

(2) The Commission is a local board within the meaning of the *Municipal Affairs Act*.

Remuneration and expenses

(3) Any amount paid by the Corporation in respect of the remuneration or expenses of members of the Commission is an expense of the Commission.

Composition of Commission

- 4.**—(1) The Commission shall consist of,
- (a) two members appointed from and by council for a term of one year or until their successors are appointed; and

(b) three members appointed by council who shall be owners or tenants in a registered subdivision in which land has been conveyed under this Act to the Corporation for a term of three years or until their successors are appointed.

(2) On the initial appointment of members under clause (1) (b), one member shall be appointed for one year, one member for two years and one member for three years. Initial appointments

(3) All members of the Commission are eligible for re-appointment. Re-appointment

(4) A member appointed under clause (1) (b) may, in the sole discretion of council, be removed by council at any time. Removal by council

(5) A replacement for a member removed by council shall be an owner or tenant as described in clause (1) (b). Replacement to be owner or tenant

(6) A vacancy arising in the membership of the Commission shall be filled by council and any person so appointed shall hold office for the unexpired portion of the term of office. Vacancies

(7) The Commission may exercise its powers if there are at least four members appointed to the Commission. Exercise of powers

(8) A concurrent vote of at least three members is necessary to pass any resolution or by-law. Voting requirement

(9) The Commission shall at its first meeting in each year elect a chairman and if the chairman is absent from a meeting, the Commission may elect another member to preside at the meeting. Chairman

(10) The meetings of the Commission shall be held at least two times each year and shall be open to the public. Meetings

(11) The chairman or any two members of the Commission may call a special meeting of the Commission upon giving seven days notice in writing to each member setting out the purpose of the meeting or upon obtaining a waiver from all members of the notice requirement. Special meetings

5.—(1) The Corporation may delegate to the Commission any or all of its powers under clause 2 (1) (c) upon such terms and conditions as may be set out in the by-law. Delegation to Commission

(2) The Corporation shall, at the expense of the Commission, provide insurance, Council to provide insurance

- (a) for all buildings, structures and equipment owned by or under the care of the Commission; and
- (b) in respect of any public liability that may result from the activities of the Commission or the ownership of the lands or easements conveyed to the Corporation under this Act.

Annual estimates

6.—(1) The Commission shall submit to the council its estimates for the current year at the time and in the form prescribed by council.

Annual report

(2) On or before the 1st day of March in each year, the Commission shall submit to council its annual report for the preceding year including a complete audited and certified financial statement of its affairs, with balance sheet and revenue and expenditure statement.

Auditor

(3) The Corporation's auditor shall be the auditor of the Commission and all books, documents, transactions, minutes and accounts of the Commission shall, at all times, be open to the auditor's inspection.

Records open to public

(4) The records, books and transactions under the control of the Commission shall, at all reasonable times, be open to inspection by any person.

Reserve fund
R.S.O. 1980,
c. 302

(5) Subject to subsection 165 (2) of the *Municipal Act*, the Commission may establish a reserve fund to meet the cost from time to time of dredging the bed of a waterway or for such other purposes as the council may approve.

Estimates to be budget

(6) The estimates as approved by council shall constitute the budget of the Commission and no expenditure other than those set out in the approved estimates shall be made without the prior approval of council.

Borrowing restrictions

(7) The Commission may borrow money solely from the Corporation with the approval of council on such terms as to interest and repayment as may be determined by council.

Initial appointment of secretary-treasurer

(8) Council may by by-law appoint a person to serve as the initial secretary-treasurer of the Commission for a term not exceeding the balance of the year in which the Commission is formed and two years thereafter.

Head office

(9) The head office of the Commission shall be located in the municipal offices for the Township of Mara for a minimum of the balance of the year in which the Commission is formed and two years thereafter and the cost of such facility,

as determined by by-law of council, is an expense of the Commission.

7.—(1) The council may by by-law require every owner of land abutting a waterway conveyed to the Corporation under this Act to construct and maintain a shorewall, at the owner's expense, to the specifications and within the time limits set out in the by-law. By-law respecting shorewalls

(2) A by-law passed under subsection (1) does not apply to undeveloped land or to an undeveloped lot or block so long as it is registered in the name of the applicant for first registration of the registered plan of subdivision until a building permit in respect of the undeveloped land or undeveloped lot or block has been issued by the Corporation. Limitation

(3) Where an owner fails to construct or maintain a shorewall in accordance with a by-law passed under subsection (1), the Commission may construct or repair the shorewall, at the owner's expense, if, Commission may construct or repair shorewalls

- (a) the Commission gives at least thirty days notice to the owner, by registered mail at the address shown on the assessment rolls, outlining the nature of the work proposed and an estimate of the cost; and
- (b) the Commission,
 - (i) gives the owner the opportunity to make oral or written representation to the Commission as to the necessity of repair or cost of construction or repair of the proposed work if such request is made within fifteen days of the mailing of the notice, and
 - (ii) considers any objection under subclause (i), confirms or varies the proposed work and advises the owner of its decision.

(4) An owner may appeal a decision of the Commission to the court of revision established under section 43 of the *Local Improvement Act* by giving written notice to the Commission and to the clerk of the Corporation within fifteen days of receiving notification of the decision of the Commission. Appeal to court of revision R.S.O. 1980, c. 250

(5) Where an appeal has been commenced under subsection (4), no work referred to in the appeal shall be undertaken by the Commission until the court of revision has made a decision or, where an appeal has been further made to the When appeal pending

830 Chap. Pr21 MARA (TOWNSHIP OF) 1986

Ontario Municipal Board, the Ontario Municipal Board has made a decision.

Powers of court of revision

(6) The court of revision has jurisdiction and power to review the necessity of repair or the cost of construction or repair of the work proposed under subsection (3) and may order that,

- (a) additional estimates of the cost be obtained;
- (b) an inspection and report be furnished by an independent, qualified engineer;
- (c) the cost of any work, including interest, be paid in equal annual instalments not exceeding three in number; and
- (d) the cost of the appeal be allocated between the parties.

Appeal to O.M.B.

(7) The Commission or the owner may appeal to the Ontario Municipal Board from any decision of the court of revision.

Powers of O.M.B.

(8) The Ontario Municipal Board has the like jurisdiction and powers as are conferred on a court of revision under subsection (6) and the decision of the Ontario Municipal Board is final.

Entry upon private property

(9) An agent or employee of the Commission may enter upon private property for the purpose of,

- (a) inspecting the construction or state of repair of a shorewall to ensure that it complies with the specifications set out in the by-law; or
- (b) constructing or repairing a shorewall in accordance with this section.

Limitations on entry, liability

(10) An entry upon private property shall be limited to the duration and extent necessary to perform an inspection, repair or construction of a shorewall, as the case may be, and the Commission shall not be liable for any action for trespass or damages unless negligence can be shown.

Recovery of expenses

(11) Expenses incurred by the Commission under subsection (3) shall be deemed to be taxes and may be levied and collected by the Corporation on behalf of the Commission in like manner and with the same priorities as municipal taxes.

8.—(1) The expenses of the Commission as set out in the estimates approved by council, including any deficit but excluding the repair and construction of shorewalls, shall be apportioned according to a formula determined by by-law of the council and levied by the Corporation upon property that has as a benefit to the owner thereof a registered right to use the waterways and private parks conveyed to the Corporation under clause 2 (1) (a) in common with other owners of property in the subdivision.

Apportionment of expenses of Commission

(2) A by-law or an amendment to a by-law passed by council under subsection (1) does not come into force until approved by the Ontario Municipal Board.

Approval of O.M.B. required

(3) Notwithstanding subsection (1), the following criteria apply to the formula determined by council:

Criteria for formula

1. Each residential unit, regardless of size, value or type of ownership shall be apportioned at the same amount.
2. Vacant lots or blocks of land zoned for single family residential use or having a zoning designation not included in this subsection or in a by-law passed under subsection (1) shall be apportioned at the single residential rate.
3. Vacant lots or blocks of land located within a registered plan of subdivision and subject to a zoning by-law prohibiting the development thereof shall be apportioned at a rate equal to one-half of the single residential unit apportionment.
4. Vacant parcels of land composed of one or more lots or blocks and zoned for multi-residential use shall be apportioned at a rate of two times the single residential rate or at a rate of one-tenth of the number of residential units permitted under the zoning by-law, whichever is greater, until the first year after the year in which a building permit has been issued in respect of the parcel, whereupon the formula established by council shall apply thereto.
5. Vacant parcels of land composed of one or more lots or blocks and zoned for commercial or industrial use shall be apportioned at a rate of two times the single residential unit apportionment until the first year after the year in which a building permit has been issued in respect of such commercial or

832 Chap. Pr21 MARA (TOWNSHIP OF) 1986

industrial lands whereupon the formula established by by-law of council shall apply thereto.

Limitation

(4) A by-law passed under subsection (1) and the criteria established under subsection (3) do not apply to undeveloped land or to an undeveloped lot or block on a registered plan of subdivision which,

- (a) continues to be registered in the name of the applicant for first registration of the registered plan of subdivision; and
- (b) abuts a waterway which remains in an undeveloped or unopen state or has not been conveyed to the Corporation under this Act,

until the first year after the year in which a building permit in respect of the undeveloped land or undeveloped lot or block has been issued by the Corporation.

Recovery of amount levied

(5) The amount levied by the Corporation under subsection (1) shall be deemed to be taxes and shall be added to the collector's roll and collected in the same manner and with the same priorities as municipal taxes.

Appeal to court of revision

(6) An owner of land may appeal the apportionment of expenses of the Commission as determined under subsection (1) to the court of revision established by council by giving written notice to the Commission and to the clerk of the Corporation within fifteen days of receiving from the Corporation notice of the amount levied against such owner's land.

Power of court of revision

(7) The court of revision has jurisdiction and power to review the proposed apportionment of expenses and may correct,

- (a) the names of the owners of the lands;
- (b) the number of apportionable units located on the lands; and
- (c) the number of single residential unit apportionments to be levied thereon.

Idem

(8) Where it appears to the court of revision that any parcel of land or lot or block that has not been made subject to the rate fixed under this section should be made subject to the rate, section 50 of the *Local Improvement Act* applies with necessary modifications.

R.S.O. 1980, c. 250

1986

MARA (TOWNSHIP OF)

Chap. Pr21

833

(9) The Commission or the owner may appeal to the Ontario Municipal Board from any decision of the court of revision.

Appeal to
O.M.B.

(10) The Ontario Municipal Board has the like jurisdiction and powers as are conferred on a court of revision under subsection (7) and the decision of the Ontario Municipal Board is final.

Power of
O.M.B.

9. Where council has enacted a by-law under paragraph 33 of section 208 of the *Municipal Act*, it may delegate to the Commission the authority to cut or remove weeds in the waters of Lake Simcoe adjacent to the private parks and may charge part or all of the costs related thereto to the Commission.

Delegation
to
Commission
R.S.O. 1980,
c. 302

10. If no by-law is passed establishing a Commission under subsection 3 (1) or if the Commission is dissolved, all the powers and duties conferred on the Commission under this Act shall be exercised by the council.

If no
Commission
established

11. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

12. The short title of this Act is the *Township of Mara Act, 1986*.

Short title

SCHEDULE "B"

BY-LAW NUMBER 97.54

THE CORPORATION OF THE TOWNSHIP OF RAMARA

BEING A BY-LAW REGARDING THE CONSTRUCTION AND MAINTENANCE OF SHOREWALLS WITHIN THE DEVELOPMENT KNOWN AS LAGOON CITY.

WHEREAS the provisions of the Township of Mara Act, 1986, (hereinafter referred to as the "Act") authorizes the enactment of a by-law requiring the construction and maintenance of shorewalls by all owners of land abutting a waterway conveyed to the Corporation of the Township of Mara in accordance with the provisions of the Act;

NOW THEREFORE the Council of the Corporation of the Township of Ramara ENACTS AS FOLLOWS;

1. DEFINITIONS:

- A. "shorewall" means a building improvement on a lot or block on a registered plan of subdivision or registered reference plan abutting a waterway and constructed to replace the natural shore at the rear or side of the lot or block.
- B. "waterway" means a lagoon, water channel, canal or passageway for boats including the shore and bed thereof and including any bank of land lying between the shore and the abutting boundary of any lot or block shown on a registered plan of subdivision or registered reference plan".

2. SCOPE:

2.1 That all owners of land abutting land conveyed to the Corporation of the Township of Ramara and used, or to be used, for a waterway shall construct at their sole expense a shorewall to the specifications hereinafter set forth, the said shorewalls to be fully constructed, installed and completed within a period of two years from the date upon which title is conveyed to the said owner, whether such conveyance has taken place prior or subsequent to the enactment of this by-law.

2.2 That all owners of land abutting land conveyed to the Corporation of the Township of Ramara and used, or to be used, for a waterway shall maintain at all times the shorewall which is either presently existing or which is constructed in accordance with the provisions of the preceding clause, in a state of repair satisfactory to the Lagoon City Parks and Waterways Commission, but the requirements of the said Commission shall at no time exceed the specifications set out herein.

2.3 That all construction or repair work shall conform to the designs and specifications set out herein.

3. SITE AND GRADING:

3.1 Shorewall configurations shall be:

- 3.1.1 "straight wall" or
- 3.1.2 "angled recess", or
- 3.1.3 "lay by"

as shown in Schedule "A", attached hereto.

3.2 The site shall be graded and sodded in the restricted areas shown in Schedule "A".

3.3 The side swales shown in Schedule "A" shall be maintained so as to be clear and functional.

3.4 No permanent or temporary building or structure shall be allowed in the restricted areas shown in Schedule "A".

4. CONSTRUCTION DESIGNS AND SPECIFICATIONS:

4.1 No construction or maintenance of the shorewalls, or site changes to the restricted areas or to the swales, shown in Schedule "A", shall be carried out without first obtaining a building permit issued by the Corporation.

4.2 All construction or maintenance of the shorewalls shall be carried out the designs and specifications of a professional engineer, except as provided for in 4.4.

4.3 All designs and specifications shall be prepared to maintain the general exterior appearances shown in Schedule "B" and Schedule "C", attached hereto.

4.4 If test piles driven at the particular site determine that an 8" I section steel pile 24'0" or less in length is driven at least 3'0" into the bed rock, then the designs shown in Schedule "B" or "C" may be used.

5. CONCRETE SHOREWALL - SCHEDULE "B":

5.1 Concrete shorewalls shall only be used for the "3.1.1 straight wall" site configuration.

5.2 Subject to 4.3 above, concrete shorewalls shall be constructed according to the design and specifications shown in Schedule "B".

6. STEEL SHOREWALL - SCHEDULE "C":

6.1 Steel shorewalls shall be used for type "3.1.2 angled recess" and "3.1.3 lay by" site configurations, and may be used for the "3.1.1 straight wall" type.

6.2 Subject to 4.3 above, steel shorewalls shall be constructed according to the design and specifications shown in Schedule "C".

7. ENFORCEMENT:

7.1 In the event that any owner fails to construct or maintain the portion of shorewall for which that owner is responsible in a state of repair satisfactory to the Lagoon City Parks and Waterways Commission, the said Commission may exercise its powers and privileges set out in the Act to compel the said owner to construct or repair the shorewall for which he or she is responsible, and, if necessary, in accordance with the provisions of the Act, to perform the said construction or repair and to collect the cost of so doing in accordance with the provisions of the Act.

7.2 The provisions of this by-law shall not apply to any owner excluded therefrom by the provisions of Section 7(2) of the Act.

8. GENERAL:

8.1 If an "angled recess" or "lay by" design shorewall is used in place of a "straight wall" design, the owner must dedicate to the Corporation an easement a minimum of ten (10') feet in width along the full limit of the lot immediately adjacent to the shorewall.

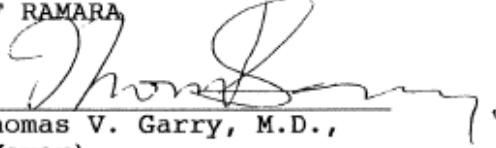
8.2 The specifications heretofore referred to are set out in Schedules "A", "B" and "C" hereto.

8.3 By-law 1595 is hereby rescinded.

8.4 That this by-law will take effect from the date of passing by the Council of the Corporation of the Township of Ramara.

BY-LAW READ A FIRST, SECOND AND THIRD TIME this 14th day
of July, 1997.

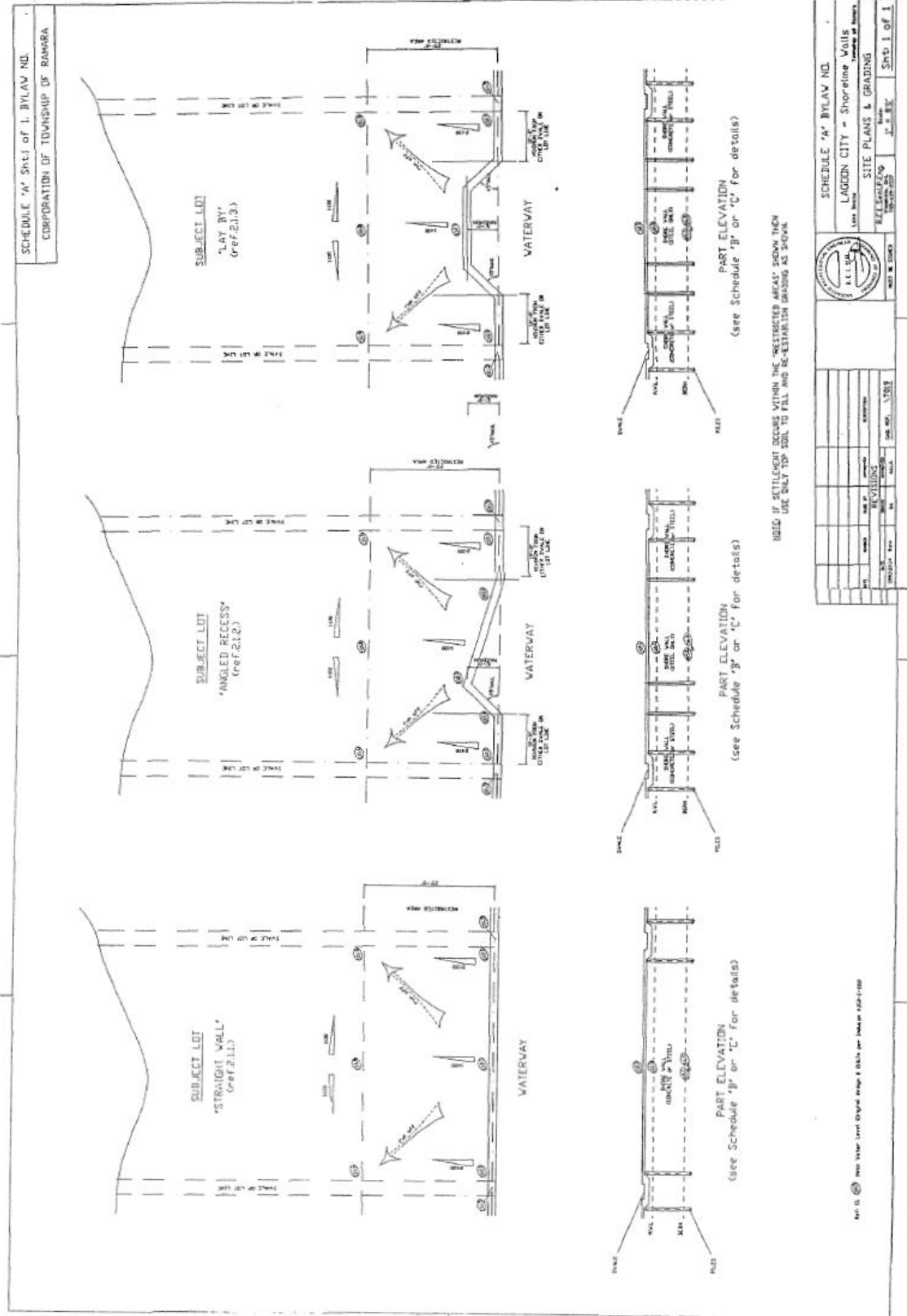
THE CORPORATION OF THE TOWNSHIP
OF RAMARA



Thomas V. Garry, M.D.,
(Mayor)



Richard P. Bates, BAS, CET,
(Clerk)



THE CORPORATION OF THE TOWNSHIP OF RAMARA

BYLAW NUMBER 99.68

A BYLAW TO AMEND BYLAW NUMBER 97.54 BEING A BYLAW TO REGARDING THE CONSTRUCTION AND MAINTENANCE OF SHOREWALLS WITHIN THE DEVELOPMENT KNOWN AS LAGOON CITY.

WHEREAS Township of Ramara Bylaw 97.54 being a bylaw regarding the construction and maintenance of shorewalls within the development known as Lagoon City, was passed under the provisions of the Township of Mara Act, 1986;

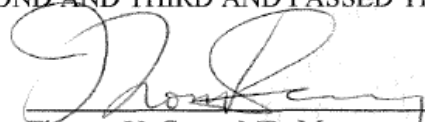
AND WHEREAS the Council of The Corporation of the Township of Ramara deems it expedient to amend Bylaw 97.54 to include criteria for the repair and design specifications;

NOW THEREFORE, the Council of the Corporation of the Township of Ramara enacts that bylaw 97.54 be amended by including the following:

1. That Section 4.2 of Bylaw 97.54 be amended to add at the end "and 4.5";
2. That Bylaw 97.54 is hereby amended by the addition of paragraph 4.5 to read as follows:

"4.5 If the maintenance or repair does not require the replacement of any pile, the tie roads and deadhead anchors being replaced shall be constructed to the design as shown in Schedule "B" or "C"."
3. That this Bylaw shall come into force and take effect on the date of passing.

BYLAW CONSIDERED READ A FIRST, SECOND AND THIRD AND PASSED TIME THIS 28th DAY OF JUNE, 1999.



 Thomas V. Garry, MD, Mayor



 Richard P. Bates, BAS, CET, CAO/Clerk

SCHEDULE "C"

BILL NO. 2017.18

THE CORPORATION OF THE TOWNSHIP OF RAMARA

BYLAW NUMBER 2017.25

BEING A BYLAW REGARDING THE CONSTRUCTION AND MAINTENANCE OF
SHOREWALLS WITHIN THE DEVELOPMENT KNOWN AS LAGOON CITY

WHEREAS the provisions of the Township of Mara Act, 1986, (hereinafter referred to as the "Act"), authorizes the enactment of a Bylaw requiring the construction and maintenance of shorewalls by all owners of land abutting a waterway conveyed to the Corporation of the Township of Mara in accordance with the provisions of the Act;

NOW THEREFORE the Council of the Corporation of the Township of Ramara ENACTS AS FOLLOWS;

1. Definitions:

- A. "shorewall" means a building improvement on a lot or block on a registered plan of subdivision or registered reference plan abutting a waterway and constructed to replace the natural shore at the rear or side of the lot or block.
- B. "waterway" means a lagoon, water channel, canal or passageway for boats including the shore and bed thereof and including any bank of land lying between the shore and the abutting boundary of any lot or block shown on a registered plan of subdivision or registered reference plan.

2. Scope:

- 2.1 That all owners of land abutting land conveyed to the Corporation of the Township of Ramara and used, or to be used, for a waterway shall construct at their sole expense a shorewall to the specifications hereinafter set forth, the said shorewalls to be fully constructed, installed and completed within a period of two years from the date upon which title is conveyed to the said owner, whether such conveyance has taken place prior or subsequent to the enactment of this By-law.
- 2.2 That all owners of land abutting land conveyed to the Corporation of the Township of Ramara and used, or to be used, for a waterway shall maintain at all times the shorewall which is either presently existing or which is constructed in accordance with the provisions of the preceding clause, in a state of repair satisfactory to the Lagoon City Parks and Waterways Commission, but the requirements of the said Commission shall at no time exceed the specifications set out herein.

2.3 That all construction or repair work shall conform to the specifications set out in Section 4 herein.

3. Site and Grading:

3.1 Shorewall configurations shall be:

3.1.1. "straight wall" or

3.1.2. "angled recess", or

3.1.3. "lay by"

as shown in Schedule "A", attached hereto.

3.2 The site shall be graded and sodded in the restricted areas shown in Schedule "A".

3.3 The side swales shown in Schedule "A" shall be maintained so as to be clear and functional.

3.4 No permanent or temporary building or structure shall be allowed in the restricted areas shown in Schedule "A".

4. Construction Designs and Specifications:

4.1 No construction or maintenance of the shorewalls, or site changes to the restricted areas or to the swales, shown in Schedule "A", shall be carried out without first obtaining the required permits issued by the Corporation of the Township of Ramara, Lake Simcoe Region Conservation Authority, Ministry of Natural Resources and Forestry, Department of Fisheries and Oceans and all other applicable regulatory agencies.

4.2 All construction or maintenance of the shorewalls shall be carried out in accordance with the designs and specifications of a professional engineer retained by the owner, except as provided for in 4.4, 4.5, and 4.6.

4.3 All designs and specifications shall be prepared to maintain the general exterior appearances shown in Schedule "B" and Schedule "C", attached

4.4 If test piles driven at the particular site determine that an 8" W-section steel pile can be driven to sound bedrock refusal with a minimum embedment depth of 8'-0" below the base of the canal, then the designs specified in Schedule "B" or "C" may be used.

4.5 If the maintenance or repair does not require the replacement of any pile, the tie rods and deadhead anchors being replaced shall be constructed to the design as shown in Schedule "B" or "C".

4.6 A corrosion inhibitive coating shall be applied to all steel components directly exposed to open-air, including areas uncovered as a result of fluctuating seasonal water elevations. Additionally, this coating shall be applied to all steel elements below grade having less than 12" of permanent soil cover.

5. Concrete Shorewall – Schedule "B":

5.1 Concrete shorewalls shall only be used for the "3.1.1 straight wall" site configuration.

5.2 Subject to Section 4 above, concrete shorewalls shall be constructed according to the design and specifications shown in Schedule "B".

6. Steel Shorewall – Schedule "C":

6.1 Steel shorewalls shall be used for type "3.1.2 angled recess" and "3.1.3 lay by" site configurations, and may be used for the "3.1.1 straight wall" type.

6.2 Subject to Section 4 above, steel shorewalls shall be constructed according to the design and specifications shown in Schedule "C".

7. Enforcement:

7.1 In the event that any owner fails to construct or maintain the portion of shorewall for which that owner is responsible in a state of repair satisfactory to the Lagoon City Parks and Waterways Commission, the said Commission may exercise its powers and privileges set out in the Act to compel the said owner to construct or repair the shorewall for which he or she is responsible, and, if necessary, in accordance with the provisions of the Act, to perform the said construction or repair and to collect the cost of so doing in accordance with the provisions of the Act.

7.2 The provisions of this by-law shall not apply to any owner excluded therefrom by the provisions of Section 7 (2) of the Act.

8. General:

8.1 If an "angled recess" or "lay by" design shorewall is used in place of a "straight wall" design, the owner must dedicate to the Corporation an easement a minimum of ten (10') feet in width along the full limit of the lot immediately adjacent to the shorewall.

8.2 The specifications heretofore referred to are set out in Schedules "A", "B" and "C" hereto.

8.3 By-law 1997.54 and 1999.68 are hereby rescinded.

8.4 That this by-law will take effect from the date of passing by the Council of the Corporation of the Township of Ramara.

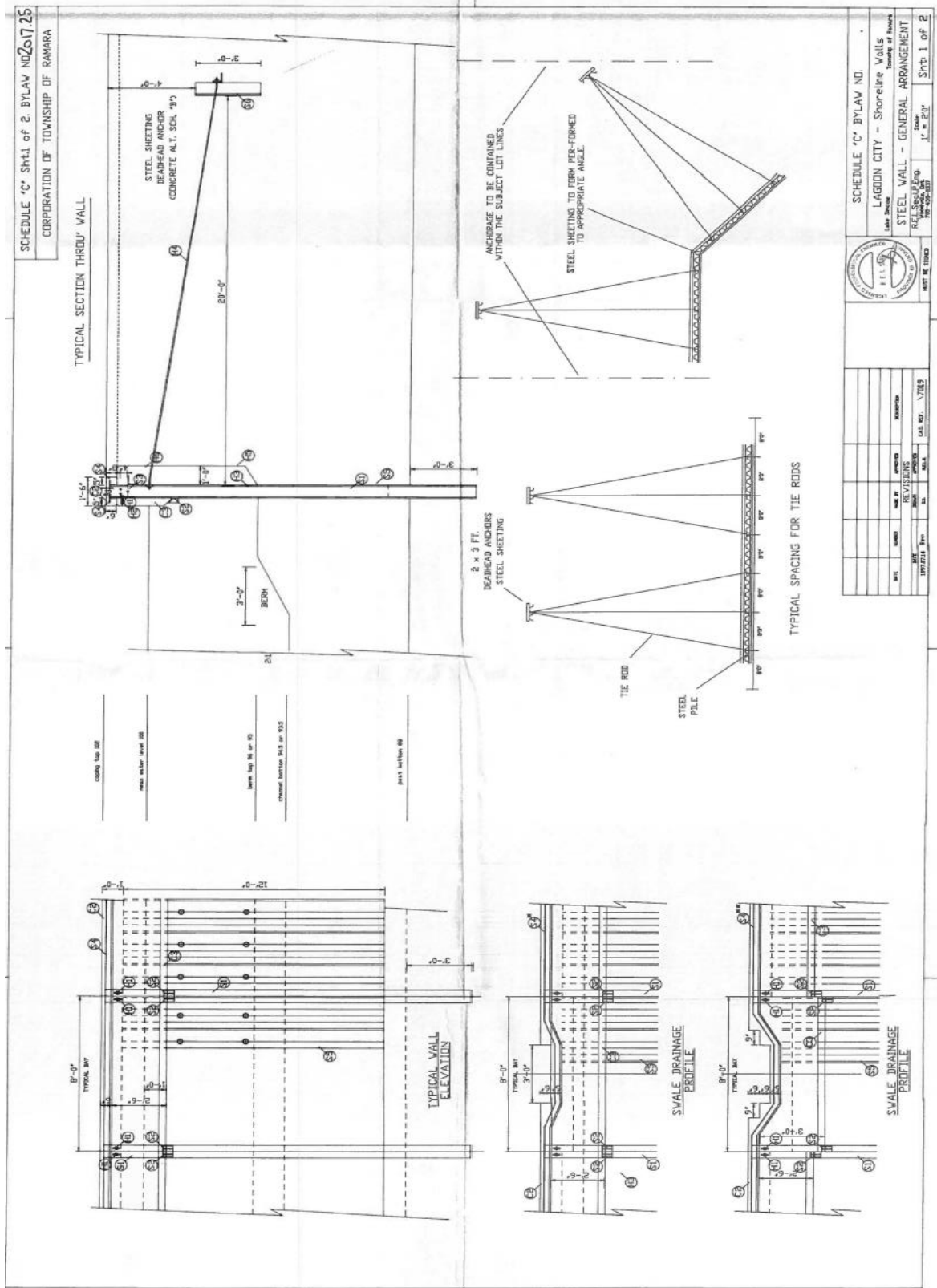
BYLAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 24TH DAY OF APRIL 2017.



BASIL CLARKE, MAYOR



JENNIFER CONNOR, CLERK



SCHEDULE "D"

BILL NO. 2020.13

THE CORPORATION OF THE TOWNSHIP OF RAMARA BY-LAW NUMBER 2020.16

BEING A BY-LAW REGARDING THE CONSTRUCTION AND REPLACEMENT OF SHOREWALLS WITHIN THE DEVELOPMENT KNOWN AS LAGOON CITY

WHEREAS the provisions of the Township of Mara Act, 1986, (hereinafter referred to as the "Act"), authorizes the enactment of a By-law requiring the construction and maintenance of shorewalls by all Owners of land abutting a waterway conveyed to the Corporation of the Township of Mara in accordance with the provisions of the Act;

AND WHEREAS the shorewalls at Lagoon City are defined as vertical engineered structures to retain soil of each property that abuts the canal;

AND WHEREAS the purpose of the shorewalls is to delineate the boundaries of the canals while protecting against the erosion and degradation that could adversely affect the canal and adjacent properties.

AND WHEREAS the shorewalls form an integral part of the character of Lagoon City.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF RAMARA enacts as follows:

1. DEFINITIONS:

- 1.0 "Commission" means the Lagoon City Parks & Waterways Commission.
- 1.1 "Corporation" means the Township of Ramara.
- 1.2 "Deck" a horizontal platform located completely on land.
- 1.3 "Dock" a platform located above or on the water, used to moor boats, used to load or unload people/goods, generally only allowed at marina and yacht club.
- 1.4 "Patio" located behind the shorewall, usually made of stones or bricks.
- 1.5 "Restricted Area" is the 7.62 metres (25 feet) set back from the shorewall that is used to protect the tie rods and deadhead anchors.
- 1.6 "Prohibited Months" shall mean from the first day to the last day of November, December, January, February and March of any given year.

- 1.7 "Shorewall" means a building improvement on a lot or block on a registered plan of subdivision or registered reference plan abutting a waterway and constructed to replace the natural shore at the rear or side of the lot or block.
- 1.8 "Side Swales" constructed drainage channel required to convey runoff from lots and roadways.
- 1.9 "Waterway" means a lagoon, water channel, canal or passageway for boats including the shore and bed thereof and including any bank of land lying between the shore and the abutting boundary of any lot or block shown on a registered plan of subdivision or registered reference plan.

2. SCOPE:

- 2.1 That all Owners of land abutting land conveyed to the Corporation of the Township of Ramara and used, or to be used, for a waterway shall construct at their sole expense a shorewall to the specifications hereinafter set forth, the said shorewalls to be fully constructed, installed and completed within a period of two (2) years from the date upon which title is conveyed to the said owner, whether such conveyance has taken place prior or subsequent to the enactment of this By-law.
- 2.2 That all Owners of land abutting land conveyed to the Corporation of the Township of Ramara and used, or to be used, for a waterway shall maintain at all times and at their sole expense, the shorewall which is either presently existing or which is constructed in accordance with the provisions of the preceding clause. Such required maintenance or repair to the shorewall shall be in a manner satisfactory to the Lagoon City Parks and Waterways Commission, but the requirements of the said Commission shall at no time exceed the specifications set out herein.
- 2.3 That all construction or repair work shall conform to and be in accordance with the specifications set out in Sections 4 and the Schedules "A" and "B" attached hereto.
- 2.4 Notwithstanding Section 2.3 above and Schedule "B" attached hereto, alternate materials can be used in the construction and repair of a shorewall if approved by a professional engineer licensed in the Province of Ontario and certified to be capable of supporting the mandatory concrete coping and fascia as set out in Section 5.3 of this By-law.

3. NOTICE OF REQUIRED WORK:

- 3.1 Notice to an Owner of required repair or replacement of the shorewall will be as follows:

- (a) The Commission will provide at least thirty (30) days notice to the Owner, by registered mail at the address shown on the assessment rolls, outlining the nature of the work required to repair or replace the shorewall;
- (b) The Commission will provide the Owner the opportunity to make oral or written representation to the Commission as to the necessity of repair or replacement of the shorewall within thirty (30) days of the mailing of the notice;
- (c) The Commission will give judgment of their decision in writing to the Owner within thirty (30) days as to the necessity of the identified repair or replacement of the shorewall.
- (d) After affording the Owner an opportunity to make submissions and having released its decision, the decision of the Commission with respect to the necessity of any repair or replacement of the shorewall is final.

4. SITE AND GRADING:

4.1 Shorewall configurations shall be:

- 4.1.1 "straight wall", or
- 4.1.2 "angled recess", or
- 4.1.3 "lay by"

and as shown in Schedule "A", attached hereto.

4.2 The site shall be graded and sodded in the restricted areas shown in Schedule "A".

4.3 The side swales shown in Schedule "A" shall be maintained so as to be clear and functional.

5. CONSTRUCTION DESIGNS AND SPECIFICATIONS:

5.1 No construction or maintenance of the shorewalls, or site changes to the restricted areas or to the swales, shown in Schedule "A", shall be carried out without first obtaining the required permits issued by the Corporation of the Township of Ramara, Lake Simcoe Region Conservation Authority, Ministry of Natural Resources and Forestry, Department of Fisheries and Oceans and all other applicable regulatory agencies.

5.2 Shorewalls are engineered structures and it is therefore the responsibility of the property owner to retain an engineer to design and certify construction of any work conducted on the shorewall.

- 5.3 All designs and specifications shall be prepared to maintain the general exterior appearances shown in Schedule "B" attached. Concrete coping and concrete fascia are mandatory as set out in Schedule "B" as attached hereto.
- 5.4 If the maintenance or repair does not require the replacement of any pile, the tie rods and deadhead anchors being replaced shall be constructed to the specifications as shown in Schedule "B".
- 5.5(a) Decks and patios capable of being removed are permitted in the "restricted area", but shorewalls must have been repaired or replaced as per this By-law, and must be constructed in a manner that allows access for inspection of shorewalls.
 - (b) If posts or piles are required for support purposes, permits shall be required (from the Township and Lake Simcoe Region Conservation Authority) as well as a deputation presented to the Lagoon City Parks & Waterways Commission, including a site plan showing tie rods and deadhead anchors, before work can be started.

6. ENFORCEMENT:

- 6.1 Every person who contravenes any of the provisions of this By-law or who causes or permits any such contravention is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.00, exclusive of costs pursuant to the provisions of s. 61 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33.
- 6.2 In the event that any Owner fails to construct or maintain the portion of shorewall for which that owner is responsible in a state of repair satisfactory to the Lagoon City Parks and Waterways Commission, the said Commission may exercise its powers and privileges set out in the Act to compel the said Owner to construct or repair the shorewall for which he or she is responsible, and, if necessary, in accordance with the provisions of the Act, to perform the said construction or repair and to collect the cost of so doing in accordance with the provisions of the Act and in accordance with Section 446 of the *Municipal Act*, 2003, as amended.
- 6.3 The provisions of this By-law shall not apply to an Owner excluded therefrom by the provisions of Section 7(2) of the Act.

7. GENERAL:

- 7.1 The specifications heretofore referred to are set out in Schedule's "A" and "B" attached hereto and form part of this By-law.

- 7.2 If an "angled recess" or "lay by" design shorewall is used in place of a "straight wall" design, the Owner must dedicate to the Township of Ramara an easement a minimum of ten (10') feet in width along the full limit of the lot immediately adjacent to the shorewall.
- 7.3 The design of all shorewalls and all related work shall be completed and sealed by a Professional Engineer licensed in the Province of Ontario.
- 7.4 Unless otherwise specifically noted, all work shall be completed in accordance with the requirements of the *Ontario Building Code Act*, 1992, S.O. 1992, c.23, as amended.
- 7.5 Sheet piling shall be driven to refusal at bedrock unless a site specific geotechnical report has been completed. The geotechnical report shall be prepared and sealed by a Professional Engineer licensed in the Province of Ontario. The geotechnical report must specifically address the proposed founding level for the sheet piles.
- 7.6 In order to preserve a uniformity of appearance relating to final elevations, the elevation of the shorewall shall be set at and as provided for in Schedule "A" and "B" attached hereto.
- 7.7 New shorewalls shall be installed so as to maintain all swales and associated items related to the original site drainage characteristics of the property.
- 7.8 The replacement of an existing shorewall shall match the geometric layout of the existing shorewall.
- 7.9 No work from barges shall occur during the prohibited months without the consent of the Lagoon City Parks & Waterways Commission.

8. SEVERABILITY:

- 8.1 In the event any provision, or portion thereof, of this by-law (including all schedules) is found by a court of competent jurisdiction to be *ultra vires*, such provision or part thereof shall be deemed to be severed and the remaining portion of such provisions and all other provisions of this by-law (including all schedules) shall remain in full force and effect.

9. SCHEDULES:

- 9.1 The following Schedules are attached hereto and form part of this By-law:
 - (a) Schedule "A" – Shoreline Walls Site Plan & Grading
 - (b) Schedule "B" – Shorewall Specifications

10. SHORT TITLE:

10.1 This By-law may be referred to as the "Shorewalls By-law".

11. REPEAL:

12.1 By-law 2017.25 is hereby repealed in its entirety.

12. EFFECTIVE DATE:

13.1 That this By-law will take effect from the date of passing by the Council of the Corporation of the Township of Ramara.

BYLAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 10TH DAY OF FEBRUARY 2020.

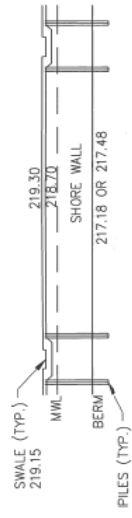
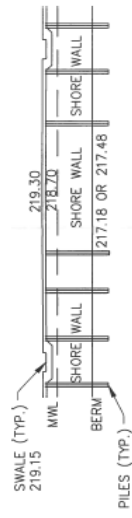
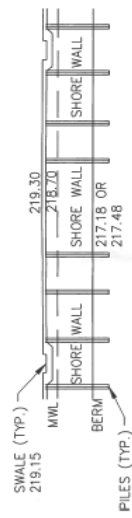
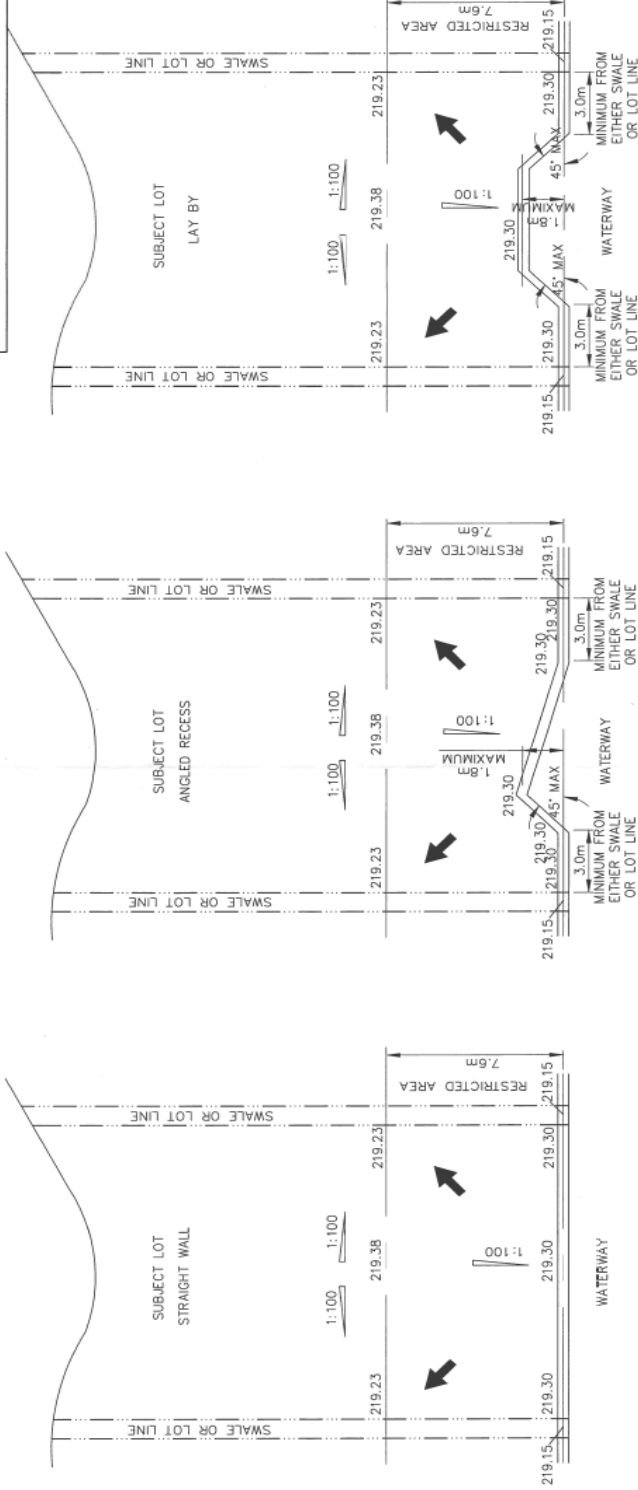


BASIL C. CLARKE, MAYOR



JENNIFER CONNOR, CLERK

SCHEDULE 'A' DWG. 1 of 1 BYLAW NO.
CORPORATION OF TOWNSHIP OF RAMARA



DWG. No. **1 OF 1**
SCHEDULE 'A' BYLAW NO.
LAGOON CITY - SHORELINE WALLS
SITE PLAN & GRADING
 SCALE: 1:200 DRAWN: WL DATE: OCT/19 JOB NO. 316803-1



NOTE: ELEVATION 218.70 - MEAN WATER LEVEL (ORIGINAL DESIGN PER INDUCON 4313-C-101)

↑ SURFACE RUNOFF DIRECTION

**SCHEDULE 'B' DWG. 1 of 3 BYLAW NO.
CORPORATION OF TOWNSHIP OF RAMARA**

SHEET PILING NOTES

1. SHEET PILING SHALL BE MANUFACTURED USING STRUCTURAL STEEL CONFORMING TO THE REQUIREMENTS OF CSA G40.20/G40.21 OR ASTM A328M.
2. SHEET PILING TO CONSIST OF ROLLED, INTERLOCKING, STRUCTURAL STEEL SECTIONS WHICH ENABLE THE JOINING OF ADJACENT SECTIONS TO FORM A CONTINUOUS WALL.
3. STEEL SHEET PILES SHALL BE A Z-TYPE PROFILE.
4. WHERE STEEL SHEET PILES ARE TO BE SPICED, WELDING SHALL BE ACCORDING TO CSA W59 AND SHALL BE DONE BY A QUALIFIED WELDER EMPLOYED BY A FIRM CERTIFIED ACCORDING TO CSA W47.1, DIVISION 1 OR 2. SPLICES IN MARINE STRUCTURES SHALL BE BELOW THE LOW WATER LEVEL.
5. THE SPECIFIED CUT-OFF ELEVATION SHALL BE WITHIN A TOLERANCE OF ±25mm.
6. THE SPECIFIED MAXIMUM DEVIATION FROM VERTICAL SHALL BE 1H:25V.
7. THE ENGINEERED DESIGN SHALL INCORPORATE JET FILTERS IN THE STEEL SHEET PILE WALLS AND A GEOTEXTILE WRAPPED DRAINAGE BACKFILL BEHIND THE WALL.

TIEBACK NOTES

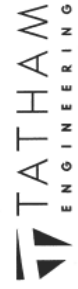
1. TIEBACKS FOR THE SHEET PILING SHALL BE THREADED ROD CONFORMING TO THE REQUIREMENTS OF ASTM A193 B7 OR ASTM A307 GRADE B.
2. CORROSION PROTECTION SHALL BE ZINC PLATED OR HOT-DIP GALVANIZED.
3. MINIMUM DIAMETER FOR TIEBACKS SHALL BE 16mm (5/8").
4. MAXIMUM SPACING OF TIEBACKS SHALL BE 2.44m (8'-0").

DEADHEAD NOTES

1. CONCRETE DEADHEADS SHALL BE SIZED TO RESIST ALL DESIGN LOADS FROM THE TIEBACKS AND SHEET PILING.
2. MINIMUM DIMENSIONS FOR ALL CONCRETE DEADHEADS SHALL BE 1.2m x 0.6m x 0.6m.
3. ALL CONCRETE FOR THE DEADHEADS SHALL CONFORM TO THE REQUIREMENTS OF CAN/CSA A23.1, EXPOSURE CLASS F-1 WITH A MINIMUM COMPRESSIVE STRENGTH OF 25 MPa @ 28 DAYS.

CONCRETE COPING, FASCIA, AND WALL PANEL NOTES

1. ALL CONCRETE FOR THE COPING, FASCIA AND WALL PANELS SHALL CONFORM TO THE REQUIREMENTS OF CAN/CSA A23.1, EXPOSURE CLASS C-1 WITH A MINIMUM COMPRESSIVE STRENGTH OF 35 MPa @ 28 DAYS.
2. ALL STEEL REINFORCEMENT SHALL CONFORM TO THE REQUIREMENTS CAN/CSA G30.18.
3. ALL EXPOSED CORNERS SHALL HAVE A 20mm x 20mm CHAMFER.
4. FINAL APPEARANCE OF ALL EXPOSED CONCRETE PANELS SHALL BE A NATURAL CONCRETE COLOUR WITH FLAT TROWELED FINISH.
5. GENERAL SIZE OF CONCRETE COPING SHALL BE 2.44m LONG x 0.45m WIDE x 0.15m THICK AND BE REINFORCED AS PER ENGINEERED DESIGN. MODIFY TO SUIT EXISTING SITE CONDITIONS AT CORNERS, TERMINATIONS AND JOINTS.
6. GENERAL SIZE OF CONCRETE FASCIA PANEL SHALL BE 2.44m LONG x 0.91m HIGH x 0.15m THICK AND BE REINFORCED AS PER ENGINEERED DESIGN. MODIFY TO ADAPT TO EXISTING SITE CONDITIONS AT CORNERS, TERMINATIONS AND JOINTS.
7. ALL CONCRETE ELEMENTS SHALL BE ADEQUATELY ANCHORED TO THE STEEL SHEET PILE WALLS, IN ACCORDANCE WITH THE ENGINEERED DESIGN.
8. WOOD BUMPER TO BE 64mm x 184mm AND SHALL BE TREATED WITH A WOOD PRESERVATIVE CONFORMING TO THE REQUIREMENTS OF CAN/CSA 080 SERIES 15. INSTALL AS PER TYPICAL BOAT SLIP BUMPER DETAIL ON DWG. No. 3 of 3.



**SCHEDULE 'B' BYLAW NO.
LAGOON CITY - SHORE WALLS**

DWG. No.

1 OF 3

SCALE: NTS

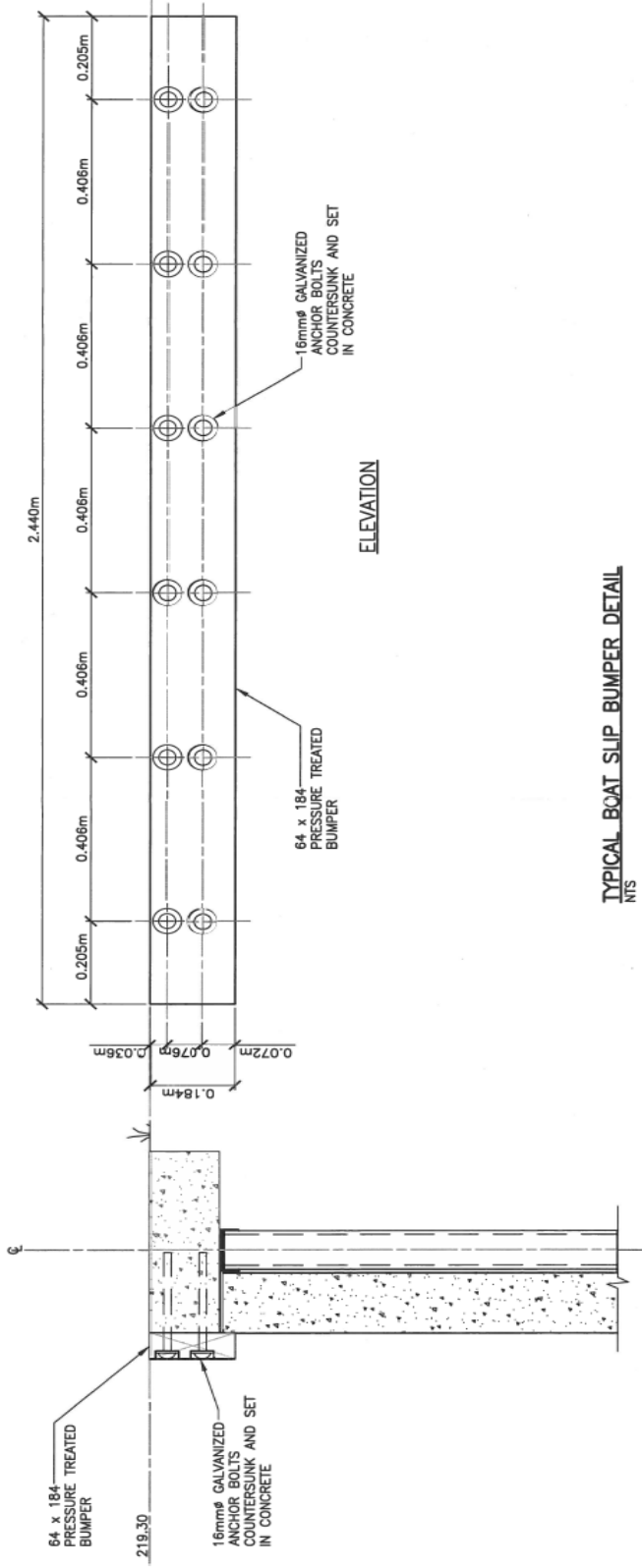
DRAWN: KF

DATE: NOV/19

JOB NO. 316803-1

Project Name: LAGOON CITY Shore Walls Date: 10/2018

SCHEDULE 'B' DWG. 3 of 3 BYLAW NO.
CORPORATION OF TOWNSHIP OF RAMARA



TYPICAL BOAT SLIP BUMPER DETAIL
NTS

	SCHEDULE 'B' BYLAW NO. LAGOON CITY - SHORE WALLS	DWG. No. 3 OF 3
	SCALE: NTS DRAWN: KF DATE: NOV./19	JOB NO. 316803-1

Revision Number: N/A 8/21/19 - 8/21/19 - 8/21/19 - 8/21/19

SCHEDULE "E"

BILL NO. 2020.43

THE CORPORATION OF THE TOWNSHIP OF RAMARA

BYLAW NUMBER 2020.57

A BYLAW TO AMEND BYLAW 2020.16 BEING A BYLAW REGARDING THE
CONSTRUCTION AND REPLACEMENT OF SHOREWALLS WITHIN THE
DEVELOPMENT KNOWN AS LAGOON CITY

WHEREAS the provisions of the Township of Mara Act, 1986, (hereinafter referred to as the 'Act'), authorizes the enactment of a By-law requiring the construction and maintenance of shorewalls by all Owners of land abutting a waterway conveyed to the Corporation of the Township of Mara in accordance with the provisions of the Act;

AND WHEREAS Council of the Corporation of the Township of Ramara passed Bylaw 2020.16 on February 10, 2020 regarding the construction and replacement of shorewalls within the development known as Lagoon City.

AND WHEREAS the Council of the Corporation of the Township of Ramara deems it necessary to amend Bylaw 2020.16 to provide for the Township to administer the shorewall bylaw and to provide for appeals to the bylaw to the Township's Appeals Committee as opposed to the Lagoon City Parks & Waterways Commission.

NOW THEREFORE the Council of the Corporation of the Township of Ramara enacts as follows:

1. THAT Section 2.2 of Bylaw 2020.16 be amended to replace the second sentence to read as follows:

Such required maintenance or repair to the shorewall shall be in a manner satisfactory to the Corporation, but the requirements of the Corporation shall at no time exceed the specification set out herein.

2. THAT Commission be replaced with the Corporation in Section 3.1 (a), (b), (c) and (d);
3. THAT Section 5.5(b) be amended to replace Lagoon City Parks & Waterways Commission be replaced with the Corporation;

4. THAT Section 6.2 be amended to replace Lagoon City Parks & Waterways Commission and Commission be replaced with the Corporation.

5. THAT the following Section be added to Bylaw 2020.16

Section 13 APPEALS COMMITTEE

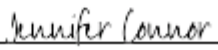
- 13.1 Council shall appoint an Appeals Committee;
- 13.2 The term of the Committee shall coincide with the term of Council;
- 13.3 The Committee shall be comprised of a minimum of Quorum 3 members;
- 13.4 The Appeals Committee of the Corporation shall hear appeals as set out in Section 3 of Bylaw 2020.16;
- 13.5 The fee for such appeal shall be in accordance with the Township of Ramara Fees & Charges Bylaw, as amended from time to time;
- 13.6 A refund in the amount of 50% shall be refunded to appellants who are successful in their appeal.

6. THAT this Bylaw shall come into force and take effect on the date of passing.

BYLAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 27TH DAY OF JULY 2020.



BASIL CLARKE, MAYOR



JENNIFER CONNOR, CLERK