

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: July 16, 2026

CASE NO(S).:

OLT-24-000868

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

Appellant 1:	Mariposa Woods Inc & Rockcliffe Park Inc.
Appellant 2:	Mariposa Woods Inc
Appellant 3:	Mariposa Woods Inc & Sandy Beach Resort Inc.
Appellant 4:	Mariposa Woods Inc. Pigeon Lake Trails Park Inc.
Appellant 5:	Flato Lindsay Community Inc., Flato Lindsay Community Two Inc., Flato Lindsay Community Three Inc., Flato Lindsay Community Four Inc., Flato Lindsay Community GG Inc., Flato Lindsay Community Five Inc., Flato Lindsay Community Seven Inc., Golf Course Community One Inc., Golf Course Community Two Inc., Golf Course Community Three Inc., and Kawartha Lakes Marina Community Inc. ("Flato")
Appellant 6:	Brian Bartley
Subject:	By-law No. 2024-113
Description:	To permit new Rural Zoning By-law that consolidates 14 existing in-effect zoning by-laws
Reference Number:	D06-2022-06
Property Address:	City Wide
Municipality/UT:	Kawartha Lakes
OLT Case No.:	OLT-24-000868
OLT Lead Case No.:	OLT-24-000868
OLT Case Name:	Mariposa Woods Inc. et al. v. Kawartha Lakes (City)

Heard:

September 9-10, 2025 by video hearing, and
September 19, 2025 Closing Submissions

APPEARANCES:**Parties**

Brian Bartley

City of Kawartha Lakes

Counsel

M. Kathleen Kinch

Denitza Koev

DECISION DELIVERED BY P. TOMILIN AND ORDER OF THE TRIBUNAL

[Link to Order](#)**INTRODUCTION**

[1] The matter before the Tribunal is the appeal filed by Brian Bartley (“Appellant”) to the new City-wide Rural Zoning By-law No. 2024-113 (“RZBL”), pursuant to s. 34(19) of the *Planning Act* (“Act”), which essentially consolidates 14 existing zoning by-laws of the City of Kawartha Lakes (“City”).

[2] The Appellant owns the property at 260 Sugar Bush Road, in Norland (“subject property / site”), that was zoned primarily Rural General under the Laxton and Digby Township Zoning By-law and would now be zoned AG – Agriculture and EP – Environmental Protection under the RZBL.

[3] The Appeal is focused on the absence of an R – Rural zone from the proposed RZBL.

[4] The proposed RZBL includes Agricultural zones but does not include a separate Rural land use. Prior to amalgamation, Rural zones had been present in many of the existing zoning by-laws of the former municipalities and townships. The new RZBL does not contain a Rural zone.

[5] There were no status requests for this Hearing.

LEGISLATIVE FRAMEWORK

[6] In making a decision on the RZBL appeal, the Tribunal must have regard to the matters of provincial interest set out in s. 2 of the Act, and the proposed application must be consistent with the Provincial Planning Statement, 2024 (“PPS”) and conform to the City’s Official Plan (“COP”).

HEARING

[7] At the Hearing, the Tribunal heard from three witnesses. The Appellant proffered factual evidence and Kevin Duguay presented land use planning opinion evidence to support the application. Matt Alexander was the sole witness for the City and provided land use planning opinion evidence on the application.

[8] The Tribunal qualified Messrs. Duguay and Alexander to provide expert opinion evidence from a land use planning perspective.

ISSUES

[9] There are five main issues pertaining to the appeal:

1. Do the Agricultural zones in the RZBL, being the Agriculture (AG), Agriculture Related (AR), and Agriculture Consolidation (AC) zones give sufficient regard to s. 2 of the Act, namely the matters of provincial interest?
2. Does the RZBL represent “good planning”?
3. Is the RZBL consistent with the PPS?
4. Is the RZBL in conformity with the COP?

5. If the answer to any one or more of Issues 1 through 4 above is “no”, should the RZBL be revised to:
- a) Add a new “Rural” zone to the RZBL to expand permitted uses in the rural designated areas; and/or,
 - b) Add a “Prime Agricultural” zone?

[10] In his *viva voce* evidence and written submissions, Mr. Duguay provided that the City is the result of the amalgamation of the former County of Victoria and its 16 member municipalities that took place in 2002.

[11] Mr. Duguay stated that certain townships within the City are predominantly agricultural land (Mariposa, Ops, Emily, Manvers, Eldon, Fenelon Falls, and Verulam) and others, located north of the Trent Canal lake system, have primarily been used for ranching or forestry, with corresponding rural designations, rather than being Prime Agricultural Areas.

[12] The new RZBL was passed on May 21, 2024 and it does not include the current zoning by-laws of the four Urban Settlement Areas, including Bobcaygeon, Fenelon Falls, Lindsay and Omemee.

[13] The stated purpose of the RZBL was to consolidate and harmonize 14 zoning by-laws into a single RZBL and to apply standard development standards across the rural areas of the City.

[14] In Mr. Duguay’s opinion, the RZBL does not include a separate and distinct R – Rural zoning category, but instead has consolidated this form of land use as part of the proposed Agricultural zones.

[15] He argued that RZBL, in its name, acknowledges that it is meant to govern the rural areas of the City, however, it fails to contain a Rural zoning category.

[16] Mr. Duguay pointed out that the rural area of the City contains vast amounts of lands that are not settlement areas, aggregate areas, agricultural areas, environmental areas or waterfront areas. Thus, in his opinion, those lands are “Rural” in nature and typically have a framework of land use policies and zoning regulations governing their use and function.

[17] Mr. Duguay is of the opinion that, if the RZBL is approved, it will lead to a number of issues such as:

- The necessity for Minor Variance or Zoning By-law Amendment Applications to allow for otherwise typically permitted Rural land uses;
- Impacting/limiting potential settlement area boundary expansion or the creation of new settlement areas;
- Reducing protections for prime agricultural lands, while creating missed opportunities for lands that should be properly considered rural by being overly restrictive as to what uses may occur there; and
- Creating many legal non-conforming properties (zoning context) by way of the elimination of the Rural zones from the City Zoning By-law.

[18] Mr. Alexander stated that he was not involved in drafting the RZBL and that he conducted an independent review of the RZBL prior to accepting an engagement to assist in this matter.

[19] In reply to Mr. Duguay’s witness statement, Mr. Alexander recommended minor revisions to the RZBL. He recommended that a cemetery only be permitted as a use where it already exists, and that dog kennels only be permitted as an on-farm diversified use.

Testimony of the Appellant

[20] The Appellant stated that he lives on the farm and has around 600 acres of land, and, in addition, he has another job that supports his farming. The Appellant’s family has lived in the area from the late 1860s. He worked away from the area for about

30 years, however, he has owned the subject property since 1982. In 2011, the Appellant moved back to the area.

[21] The Appellant testified from a lay person's perspective. He thinks that people will be unable to earn \$500-\$600 per acre from the cash crops due to a shallow soil surface over a bedrock. The Appellant stated that in the surrounding area recreational uses, such as hunt camps and cabins, predominate over the agricultural uses, such as ranching.

[22] The Appellant has some livestock and is involved in ranching and maple syrup production. He noted that over time the surrounding land use has changed from ranching to recreational uses.

[23] During cross-examination, the Appellant confirmed that he is not seeking any specific amendments to his site, rather, his appeal is related to the Agricultural zone in the RZBL.

Issue 1

[24] At the onset of the Hearing, Messrs. Duguay and Alexander agreed that the RZBL has regard for ss. 2(i) and 2(r) of the Act. Thus, the Tribunal must determine whether the Agricultural zones have regard to the following sections of the Act:

2(b) the protection of the agricultural resources of the Province;

...

2(j) the adequate provision of a full range of housing, including affordable housing;

...

2(l) the protection of the financial and economic well-being of the Province and its municipalities;

...

2(p) the appropriate location of growth and development.

[25] Mr. Duguay provided that the Prime Agricultural and Rural land use designations of the COP will protect the agricultural resources of the Province of Ontario ("Province"), including the City. However, the Rural land use is not appropriately recognized, and Prime Agricultural lands are not distinctly considered.

[26] In his view, the intent of the RZBL is to have all previously designated and zoned Rural lands function as part of the Prime Agricultural land use designation of the COP. Yet, large areas of land within the City have traditionally not been agricultural in purpose or function. By imposing agricultural land regulation on land that is not agricultural in purpose or function is not good planning, as it would potentially limit rural land use opportunities. He thinks that the RZBL should be revised to include a Rural zone separate from Agricultural zones as it would allow for land use of both types.

[27] Mr. Duguay proffered that the current version of the RZBL limits the appropriate rural residential lot creation. Those lots would accommodate single detached dwellings relying on private water and waste-water services and such lots would not be suitable for the four Urban Settlement Areas by virtue of their lot area and site servicing context. The PPS allows for such limited residential use, providing it meets the Minimum Distance Separation ("MDS") Guidelines.

[28] In Mr. Duguay's opinion, the consolidation of the rural part of the City into Agricultural zones will diminish the economic well-being of many of the properties by restricting land use opportunity and choice in rural non-agricultural areas and by imposing the burden of zoning by-law amendment applications on landowners, whose proposed uses are typical rural land uses that they would have previously been able to implement as of right.

[29] He pointed out that the COP contains both Prime Agricultural and Rural land use designations. The City is one of the very few municipalities in the region that does not have a Rural zone. In his professional opinion, the Rural designation should be included as appropriate for growth and development of the City.

[30] It is Mr. Duguay's opinion that the RZBL is not in conformity with the provisions of s. 2 of the Act.

[31] Mr. Alexander proffered that s. 2(b) of the Act establishes "the protection of the agricultural resources of the Province" as a matter of provincial interest. In his view, the regulations of the RZBL protect the agricultural resources by limiting land uses to those which are consistent with the PPS and have regard for matters of provincial interest.

[32] It is Mr. Alexander's opinion that the RZBL has regard for the protection of the financial and economic well-being of the Province and its municipalities, as outlined in s. 2(l) of the Act. He said that the RZBL establishes separate zones for "Agriculture", "Agriculture-Related" and non-agricultural uses, where appropriate. Non-agricultural uses are permitted where they exist and in rural settlement areas where public services and economic activity are more cost-effective to provide. Existing non-agricultural uses in Outside Settlement Areas, in accordance with the direction of the COP, are permitted by the RZBL.

[33] Regarding ss. 2(j) and 2(p) of the Act, Mr. Alexander stated that section 2 of the PPS directs that the focus on growth and development is to be within Settlement Areas. Due to the RZBL only being applicable to the lands outside the Urban Settlement Areas, its focus is on managing development to ensure it is appropriate for the rural areas, rather than on facilitating growth in the rural areas.

[34] Mr. Alexander discussed policies 2.5, 2.5.2 and 2.6 of the PPS and section 16.3 of the COP and opined that the RZBL allows for a range of housing options through the Agriculture, Rural Residential, Hamlet Residential and Waterfront Residential zones.

[35] In summary, Mr. Alexander opinion was that the RZBL has regard for the appropriate location of growth and development and the adequate provision of a full range of housing, including affordable housing.

[36] According to s. 2 of the Act, the Tribunal is required to have regard to matters of provincial interest when carrying out its responsibilities.

[37] The Tribunal notes the importance of protecting agricultural resources, and the financial and economic well-being of the Province. Agricultural zones in the proposed RZBL have regard to matters of provincial interest, as elaborated on in the PPS. The absence of the Rural zone does not impair appropriate rural growth, since the RZBL is only applicable to lands outside the Urban Settlement Areas of the City. Therefore, there is more focus on managing development to ensure it is appropriate for the rural areas, rather than on facilitating growth in the rural areas.

[38] The Tribunal finds that the proposed RZBL has appropriate permissions for non-agricultural use in both Settlement Areas and Outside Settlement Areas and ensures that development is appropriate for the rural areas. In addition, the RZBL allows for a range of housing options through various zones, such as Agriculture, Rural Residential, Hamlet Residential and Waterfront Residential.

[39] The Tribunal notes that the RZBL includes the provision of a full range of housing and appropriate location of growth and development. Single detached dwellings are permitted and policy 2.5.2 of the PPS directs growth and development away from the agricultural areas.

[40] The Tribunal also notes that the proposed RZBL includes a number of different zones, such as Commercial Rural zone (CA), Commercial Recreational zone (CR), Rural Residential zones (RR1A, RR1B, RR1C, RR1D, RR2A, RR2B, RR2C, RR3A, RR3B, RR3C and RR3D), Industrial Rural zone (IA) and Open Space zones (OS, OSR and OSS), which permit a wide range of rural land uses, where applicable, through inclusion of the areas designated "Rural" in the COP.

[41] The Tribunal finds that the inclusion of the Agricultural zones has regard s. 2 of the Act, namely, matters of provincial interest.

Issue 2

[42] Issue 2 deals with whether the proposed RZBL represents good planning.

[43] Mr. Duguay explained that, prior to the RZBL, townships without a significant agricultural presence had a rural-type zone. Predominantly agricultural townships had an agricultural type zone or zones. In several townships both zones existed and were regulated differently. At a conceptual level, the zone categories had a relationship to the typical land uses and bore a relationship to the COP land use designations. He added that site-specific exceptions existed and continue to exist in the RZBL, but a non-agricultural rural zone was a norm, not an exception.

[44] Mr. Duguay believes that, in attempting to consolidate and standardize these various municipal/township zoning by-laws, but in omitting a Rural zone and treating all rural lands as agricultural in some form, the RZBL is wrong in concept in assuming the lands are agricultural in character.

[45] While reviewing section 7 of the RZBL, Mr. Duguay identified several concerns:

- 1) No separate and distinct R – Rural zone;
- 2) Discrepancies with the list of permitted uses outlined in section 16.3 (Rural Designation – permitted uses). Several listed uses are not specified in any of the three Agricultural zones; and
- 3) Lack of clarity – definitions of permitted uses; such as inconsistency between the COP's generalized list of permitted uses and the specific list of RZBL's permitted uses.

[46] He added that the lack of an R – Rural zone will result in the requirement for many land use approval applications, either minor variance applications or zoning by-law amendment applications, to allow previously permitted Rural zone uses.

[47] It is Mr. Duguay's professional planning opinion that a R – Rural zone is to be established to form part of the RZBL, where it would contain permitted uses and regulations.

[48] Mr. Duguay recommended the following permitted uses for a Rural zone:

- a) a dwelling unit;
- b) an additional dwelling unit (ARU);
- c) conservation or forestry use;
- d) a veterinary clinic;
- e) a riding and boarding stable;
- f) a home industry or home occupation;
- g) a hunt camp;
- h) a cemetery;
- i) a sawmill;
- j) a contractor's yard;
- k) a dog kennel;
- l) a wayside pit or quarry in accordance with the provision of the *Aggregate Resources Act*; and,

m) the following agricultural uses:

- agriculture;
- agriculture-related uses; and
- agri-business uses, pursuant to section 15.3.1 of the COP.

[49] In addition, he recommended the following regulations and notes:

Regulation Type	Requirement
Minimum Lot Area	20 hectares ("ha")
Minimum Lot Frontage	60 metres ("m")
Minimum Yards	
Front	20 m
Rear	20 m
Side (Interior)	15 m
Side (Exterior)	15 m
Wateryard	30 m
Maximum Lot Coverage	15%
Maximum Building Height	11 m

Regulations for a Dwelling Unit	
Regulation Type	Requirement
Minimum Lot Area	0.8 ha
Minimum Lot Frontage	30 m

Minimum Yards	
Front	20 m
Rear	20 m
Side (Interior)	15 m
Side (Exterior)	15 m
Wateryard	30 m
Maximum Lot Coverage	10%
Maximum Building Height	11 m

Notes:

1. An additional dwelling unit (ADU) shall be permitted provided a dwelling unit is established and existing on a lot.
2. An additional dwelling unit (ADU) shall be subject to regulatory provisions of Section 4.0 of the By-law.
3. Any accessory building/structure shall conform with the regulatory provisions of Section 4.0 of the By-law.

[50] Mr. Duguay advised that, once a R – Rural zone is established, the City would need to reassess the portions of the rural areas to which the Rural zone would apply.

[51] Mr. Duguay noted that the RZBL contains three agriculture zones, however, it does not distinguish between prime agricultural lands and other forms of agricultural land, and the word “prime” does not appear in the RZBL.

[52] He pointed out that in the City with notable land diversity and a presence of agriculture performed on lands of lesser soil classes that are not “prime”, good planning relative to zoning should align with the COP and the PPS to distinguish the constraints and permissions that apply for agricultural land that is “prime” versus “non-prime”.

[53] Mr. Duguay opined that narrowing the uses of rural lands creates Minimum Distance Separation (“MDS”) implications impacting residential development by lot creation. He feels that there is a greater possibility of MDS conflicts that will impact and delay adjacent residential development because the RZBL eliminates more compatible uses on rural lands.

[54] In Mr. Duguay's professional opinion, the RZBL does not represent good planning due to the proposed agriculture zones imposing undue development regulations and limitations on lands which have other forms of rural character.

[55] In Mr. Alexander's opinion, the RZBL represents "good planning" applicable to the lands designated as Rural in the COP, and it does not impose undue development regulations or limitations on it.

[56] He mentioned that the RZBL includes zones for Agriculture, Agriculture-Related, Hamlet Residential, Rural Residential, Residential Mobile Home Park, Commercial General, Commercial Highway, Commercial Rural, Commercial Recreation, Commercial Campground, Industrial, and other zones. Agriculture, resource-based recreational uses, commercial uses and other non-agricultural uses are permitted for rural lands without Prime Agricultural conditions.

[57] Mr. Alexander provided that sections 16, 16.1, and 16.2 of the COP are applicable.

[58] He notes that section 16.1 of the COP includes the following objectives:

- a) To promote growth and development of the City's agricultural and natural resources through a sound economic, social and environmental framework;
- b) Protect agricultural land that is primarily class 4-7 for agricultural production from fragmentation, development and land uses unrelated to agriculture; and
- c) Preserve and promote the rural character of the City and the maintenance of the natural countryside.

[59] The objectives of the designation, in section 16.2 of the COP, include:

- a) Protecting agricultural lands from non-farm activities and ensuring that non-agricultural uses and development is encouraged to locate within designated settlement areas;
- b) Protecting and strengthening the agricultural community while permitting uses that would support the agricultural community and would not conflict with them;
- c) Supporting farming operations as an important component of the economy, a source of employment, and a way of life for many rural residents;
- d) Recognizing farming as a vital participant in the protection of the environment and encouraging sustainable farming practices;
- e) Encouraging agriculture-related businesses on farms to strengthen the viability of the agricultural industry sector and minimize severances for non-agricultural activities;
- f) Supporting the advancement of agricultural production and management; and
- g) Providing for the wise use and management of resources and resource based recreational activities.

[60] It is Mr. Alexander's opinion that, within the COP's Rural designation, the priority is the protection of, and support for, agricultural uses, as outlined in sections 16.3, 16.3.1 and 16.3.8 of the COP below.

[61] Specifically, section 16.3 states: “The primary use will be agriculture in the form of ranching and forestry.” Section 16.3.1 states: “The permitted uses in the Prime Agricultural Designation (“PAD”) are permitted and apply in this designation.” Further, section 16.3.8 states: “New agricultural lots may be permitted only where the severed and retained lots are intended for agricultural use. The lots shall: a) have a minimum lot size of 40 hectares.”

[62] Mr. Alexander brought to the Tribunal’s attention that, as part of the RZBL review in 2020, a discussion paper was prepared (“Review Paper”). A COP Conformity Analysis (“CA”) using Geographic Information Systems mapping was included in the Review Paper. The CA identified potential conflicts between the policies of the COP and existing zoning and informed the mapping and revisions to zone categories to better align with the land use designations in the COP.

[63] The CA reviewed the composition of each land use designation, including Rural, and demonstrated that Agricultural zones are present in each designation, ranging between 12% of Tourist Commercial lands to 82% of Rural lands. Each designation permits uses that align with the goals and objectives of each land use designation while balancing the PPS objectives for maintaining the agricultural land base in accordance with the general policies for Agriculture in section 4.3.1 of the PPS. He continued that a review and consolidation of site-specific exemptions was also conducted, and it confirmed whether site-specific exceptions remained appropriate in the context of the COP.

[64] The outcome of the above CA formed the basis for development of the new parent zones (Agricultural zones, which include Agriculture, Agricultural Related and Agricultural Consolidated) within the RZBL. Thus, the regulatory framework for the Agricultural zones in the RZBL is guided by the COP and provincial guidance.

[65] In Mr. Alexander's professional opinion, the RZBL represents good planning in that it seeks to achieve the goals and objectives of the COP's Rural designation by prioritizing the protection of agriculture in the Rural designation. He asserted that the process of consolidating the zoning by-laws of the former townships was comprehensive and considered the local and historical context of land use in the area by recognizing and regulating existing non-agricultural uses in appropriate zones.

[66] Mr. Alexander argued that implementing MDS is required by the PPS and the COP with respect to lands within the PAD. He stated that the PPS includes guidance on protecting agricultural uses and farm practices in Prime Agricultural Areas.

[67] Mr. Alexander noted that section 2.6.5 of the PPS applies the MDS requirement to new land uses, including the creation of lots, and new or expanding livestock facilities on rural lands which are not defined as "Prime Agricultural". Section 4.3 of the PPS requires the use of the MDS formulae for new land uses, residential dwellings, and non-agricultural uses in Prime Agricultural Areas.

[68] Sections 15 and 16 of the COP require that all farm and non-farm developments comply with provincial MDS formulae to minimize odour conflicts between livestock facilities and other developments.

[69] It is Mr. Alexander's overall opinion that the RZBL represents good planning with regards to the implementation of the MDS Guidelines. Thus, establishment of an additional "Prime Agricultural" zone would not be necessary.

[70] It is the opinion of Mr. Alexander that the RZBL represents good planning because it seeks to achieve the goals and objectives of the COP's Rural designation by prioritizing the protection of agriculture in the Rural designation. The development regulations of the Agricultural zones in the RZBL are appropriate within both the Prime Agriculture designation and the Rural designation given the direction from the COP to prioritize the protection of agricultural lands.

[71] Mr. Alexander opined that a specific “Prime Agricultural” zone is not necessary since the COP applies the same policies for Agricultural land uses in the PAD as in the Rural designation.

[72] In summary, Mr. Alexander is of the opinion that the Agricultural zones of the RZBL are consistent with the PPS and appropriately implement the policies of the COP. The RZBL establishes appropriate zones for agricultural and non-agricultural uses throughout the areas designated Prime Agricultural and Rural in the COP. Overall, the RZBL represents good planning.

[73] Regarding **Issue 2**, the Tribunal disagrees with Mr. Duguay’s assessment and finds the evidence of Mr. Alexander as more thorough overall.

[74] The Tribunal disagrees with Mr. Duguay’s argument that the RZBL does not represent good planning due to the requirements of additional land use approvals, such as a re-zoning or a minor variance applications.

[75] The Tribunal finds that the requirement for land use approval applications in the RZBL is appropriate, as it would provide the City with an opportunity to ensure that the proposed use conforms to the applicable policies of the COP and it would allow for site-specific exemptions that may be required in order to accommodate the proposed use.

[76] The Tribunal finds that zoning granularity beyond the COP is unnecessary, as the COP already provides policies for lands within its Rural designation. The Tribunal notes that the RZBL includes appropriate protection of Prime Agricultural lands and land uses through conformity with the COP.

[77] The Tribunal finds that implementation of MDS requirements is consistent with the PPS.

[78] The Tribunal finds that adding a R – Rural zone may be a reasonable planning approach, however, the omission of a R – Rural zone would not result in the RZBL not

being a good planning approach and will be further addressed in the discussion of Issue 5.

[79] The Tribunal disagrees with Mr. Duguay's position that the RZBL would only represent good planning, contingent on additional rewrites, among other things, including an additional R – Rural designation.

Issue 3

[80] Mr. Duguay proceeded with his review of the PPS. He opined that the RZBL focuses on the rural part of the City and does not include the four Urban Settlement Areas of Lindsay, Omemee, Fenelon Falls and Bobcaygeon.

[81] He voiced a concern regarding permitting "Agriculture" uses in all three of the proposed zones, including lands that have not served agricultural functions and purposes historically in the townships north of the Trent Canal, which have shallow soils over bedrock and have historically been primarily used for ranching or forestry.

[82] Mr. Duguay opined that the description of the Agricultural zones and definition in the RZBL are not consistent with section 2.3.2 of the PPS. He is concerned that the Agricultural designation in the new RZBL to lands previously designated and zoned as Rural is problematic, as it would apply to any future settlement area creation or expansion.

[83] Mr. Duguay provided that the stipulations under a new RZBL placed on the lands previously designated as Rural will be restrictive on what would otherwise be appropriate uses, such as hunt camps. In his opinion, the RZBL does not do enough to protect and encourage agricultural activities on prime agricultural lands and will permit uses that should not be allowed by the COP, such as cemetery, commercial greenhouse, forestry, riding stable or equestrian centre, cannabis production and processing facility, agri-tourism, single detached dwelling (not accessory to other permitted uses), dog kennel (not as a secondary use), specified accessory uses (bed

and breakfast, home industry, home occupation, outside storage and shipping containers).

[84] Mr. Duguay proffered that the RZBL permits agricultural uses, however, the Agricultural zones, as proposed, will not permit residential lot creation except for farm consolidations.

[85] During cross-examination, Mr. Duguay agreed that the permissions for lot creation that are set out within the COP would continue to remain in place and apply to lands designated as Rural, irrespective of zoning.

[86] It is Mr. Duguay's overall opinion that the RZBL is not consistent with the PPS.

[87] Mr. Alexander proffered that the RZBL is only applicable to the Rural Areas of the City, as defined in the PPS.

[88] Mr. Alexander stated that section 2.6.1 of the PPS sets out the types of uses that may be permitted in Rural Lands, as defined by the PPS. It is up to the City to implement this policy through its COP by defining which land use designations are most appropriate for the various uses that are listed in the PPS. He pointed out that "Rural Lands", as defined in the PPS, are separate and distinct from the "Rural" designation in the COP.

[89] Mr. Alexander said that section 2.6.1 of the PPS permits agriculture, agriculture-related and on-farm diversified uses on Rural Lands, as well as in Prime Agricultural Areas. The definition of Agricultural Uses in the PPS does not make a distinction between agricultural uses located in Prime Agricultural Areas compared to Rural Lands.

[90] The RZBL applies the same Agricultural zone to lands used for agriculture whether they are within the PAD or the Rural designation of the COP. The RZBL applies other zoning restrictions on lands designated Prime Agricultural in the COP to recognize Agriculture-related uses and other existing non-agricultural uses in conformity

with the COP, such as limited residential uses, community uses, and commercial and industrial uses.

[91] In his view, the distinction between how the PPS treats Prime Agricultural Areas compared to Rural Lands is related to land division and is addressed through policies of the COP and would not be addressed through regulations of the RZBL.

[92] Mr. Alexander explained that the RZBL does not apply the Agricultural zone to lands that do not serve a meaningful agricultural protection function and/or that have other forms of rural character and existing uses, such as resource-based recreational uses. Other rural land uses, such as resource-based recreational uses, are permitted in non-agricultural zones within the RZBL.

[93] It is Mr. Alexander's overall opinion that the RZBL is consistent with the PPS in its approach of applying the same Agriculture (AG) zone to agricultural lands within the PAD of the COP as the Rural designation.

[94] Mr. Alexander opined that the RZBL is consistent with section 4.3 of the PPS. He stated that, in section 4.3.2 of the PPS, Prime Agricultural Areas, including specialty crop areas, are designated for long-term agricultural use, with Specialty Crop Areas given the highest protection priority. However, the COP does not designate Specialty Crop Areas, and no Specialty Crop Areas have been identified within the City.

[95] Mr. Alexander provided that section 15 of the COP contains policies for the PAD. The goals for PAD include to: "Protect land that is primarily class 1-3 agricultural production from fragmentation, development and non-farm related uses" and "To protect prime agricultural lands by encouraging the business of agriculture, by providing for innovation and diversification within agriculture, by providing additional economic opportunities through secondary uses."

[96] Mr. Alexander disagrees with Mr. Duguay's opinion that "RZBL does not do enough to protect and encourage agricultural activities on prime agricultural lands and will permit uses that should not be allowed by the COP". Mr. Alexander stated that, while cemeteries are not permitted as a primary use in either the PAD or Rural designations of the COP, section 15.3 of the COP states that "secondary uses" are allowed within the PAD; thus, cemeteries could fall under secondary use category. Additionally, section 2.3.3 of the Ontario Ministry of Agriculture, Food and Rural Affairs Guidelines for Permitted Uses in Prime Agricultural Areas indicates that cemeteries may also be permitted in Prime Agricultural areas in the context of section 4.3.5.1(b) of the PPS related to limited non-residential uses.

[97] Mr. Alexander pointed out that, while the RZBL is attempting to strike a balance between the PPS and the COP by permitting cemeteries in the Agriculture zone, it would be more prudent for the RZBL to only permit a cemetery in the Agriculture zone where it already exists or as a secondary use.

[98] Mr. Alexander opined that a dog kennel is not considered an Agricultural or Agriculture-Related use, unless it was directly related to agricultural operations in the area. He added that dog kennel provisions included in the RZBL are an attempt to reduce potential conflicts with a dog kennel operation.

[99] In Mr. Alexander's opinion, commercial greenhouse, forestry, riding stables, and equestrian centres are considered agricultural uses. Cannabis production also falls into agricultural or agriculture-related use, however, it is provided as a separate use category in the RZBL due to specific federally regulated elements of the use.

[100] Mr. Alexander clarified that agri-tourism is only permitted as an on-farm diversified use, as specified in section 4.24 of the RZBL. Accessory uses, such as home occupation, home industry, bed and breakfast, outside storage and shipping containers are only permitted under the provisions of section 4.1 of the RZBL.

[101] Mr. Alexander stated that single detached dwellings are permitted on existing lots of record, including within Prime Agricultural lands. However, new lot creation must be in accordance with the COP and PPS.

[102] He said that the RZBL includes zones and regulations to implement the special provisions of the COP and existing uses that predate the RZBL and were permitted by the previous zoning by-laws of the former townships.

[103] Mr. Alexander addressed concerns of Mr. Duguay on the issue of over permitting certain uses on lands designated Prime Agricultural through the Agricultural zones by recommending amendment to the RZBL that sets out the Permitted Uses in the Agricultural zones, as follows:

- a) To only permit existing cemeteries in the Agricultural zones; and
- b) To only permit dog kennels as “On Farm Diversified Uses” in the Agricultural zones.

[104] Mr. Alexander concluded that, in his opinion, the RZBL is consistent with the PPS as it appropriately regulates land uses within the Rural Areas of the City, and it is consistent with the policies and permitted uses established by the PPS for Prime Agricultural Areas and Rural Lands.

[105] With respect to **Issue 3**, the Tribunal finds that the RZBL is consistent with the PPS by applying the same Agricultural zones to lands used for agriculture, regardless of if they are within the PAD or the Rural designation of the COP.

[106] The Tribunal notes Mr. Duguay’s concern that “the RZBL does not do enough to protect and encourage agricultural activities on prime agricultural lands and will permit uses that should not be allowed by the COP”. In that regard, the Tribunal finds the evidence of Mr. Alexander is more persuasive. In his evidence, Mr. Alexander explained that parts of the COP applicable to the Rural designation are focused on

protecting agricultural lands from development, fragmentation and other uses not related to agriculture. The RZBL prohibits uses on Prime Agricultural lands that are not permitted in the COP or by PPS.

[107] The Tribunal agrees with Mr. Alexander's recommendation that a cemetery only be permitted as a use where it already exists and that dog kennels only be permitted as an on-farm diversified use in Agricultural zones.

[108] Overall, the Tribunal finds that the RZBL is consistent with the PPS.

Issue 4

[109] Mr. Duguay said that within the geographic limits of the City are vast areas of rural lands that are specifically designated as part of the COP. The proposed RZBL fails to include an appropriate R-Rural zone serving to implement the Rural designation of the COP.

[110] Rural designated lands may provide, in some instances, support for agricultural land use but often are used for uses that are not directly agricultural in nature.

[111] Mr. Duguay opined that rural areas form a significant and integral feature of the City. The proposed A – Agricultural zones of the RZBL fail to recognize the planned function and purpose of the rural lands. The rural part of the City and its associated land base warrant distinct zoning as part of the RZBL.

[112] He stated that section 2.2.2 of the COP speaks to a prohibition of new vacant residential lots in Prime Agricultural Areas. Given that prime agricultural land is not its own zone in the RZBL and because typical rural zoning is not included, it can be interpreted that the RZBL would prohibit such lot creation in lands previously designated as "Rural".

[113] Mr. Duguay proffered that a reference is made to rural land uses, however, the proposed RZBL does not include an appropriate zone to regulate it. In his professional opinion, it is inconsistent and does not conform to the COP.

[114] Mr. Duguay stated that limited low-density residential land uses could create challenges related to MDS Guidelines with expansion of agricultural/farm operations. In addition, if the RZBL is approved, it will place restrictions on lands that are not suitable for agricultural uses and restrict what other uses could occur and does not represent good planning.

[115] He said that the COP contains map schedules illustrating lands designated as “Prime Agricultural”, and “Rural”, as well as other land use designations. However, there is no evidence of the elimination of companion zoning for these other land use designations as part of the proposed RZBL.

[116] Mr. Duguay provided that the RZBL applies the Agricultural zone to lands that do not serve a meaningful agricultural protection function and/or that have other forms of rural character and existing uses, such as resource-based recreational uses. The policies of sections 16.1 and 16.2 are to allow for various land uses, not being designated as Prime Agricultural, to compliment, support and be compatible with Prime Agricultural land uses/designation. However, the limits of these sections are not appropriate for areas that do not require the same protections or mitigation as Prime Agricultural lands. He pointed out that the map schedules of the COP illustrate vast parts of the rural portion of the City, being designated as “Rural”.

[117] In reviewing the proposed Agricultural zones in section 7 of the RZBL, Mr. Duguay noted that not all listed permitted uses of section 16.3 of the COP are included. Because of that, existing uses that are not part of the RZBL are now constrained by legal non-conforming use policies. Future growth and development for these uses will require site-specific exceptions in order to be permitted, when they should have been included as of right in a rural-type zone to conform with the COP.

[118] He noted that a “hunt camp” is defined in the RZBL (page 23, section 3.0) and its floor area is regulated in section 4.16. However, according to Table 10-2 of the RZBL, a “hunt camp” is a permitted use only in Environmental Protection and Open Space zones and is not permitted in the proposed Agricultural zones. In Mr. Duguay’s opinion, a hunt camp is an example of a form of rural character that is non-agricultural in nature, is a valued amenity for people who hunt and enjoy spending time at hunt camps, provides positive economic impact by bringing people to the area and was permitted on rural lands under several of the rural zoning by-laws of the former townships.

[119] Mr. Duguay said that low density single detached dwellings are permitted in section 16.3 of the COP. In his view, permitting limited low density residential in the rural part of the community is appropriate, provided that all applicable land use policies and regulations are satisfied. This form of land use is not intended to be part of designated Urban and Rural Settlement Areas.

[120] In conclusion, Mr. Duguay stated that, from a good planning perspective, the role of the proposed RZBL is to implement both “Prime Agricultural” and “Rural” land use designations.

[121] It is Mr. Duguay’s opinion that the RZBL is not in conformity with the Rural land use designation and related policies of the COP.

[122] Mr. Alexander opined that the RZBL conforms with the direction of section 15.3.1(e) and (d) of the COP by permitting Secondary Uses and Agri-Business Uses in the form of On-Farm Diversified Uses and Agriculture-Related Uses. However, the RZBL does not permit uses in the PAD that are prohibited or not contemplated by the PPS or the COP.

[123] Mr. Alexander explained that the objectives of the COP’s Rural designation include protecting agricultural lands from non-farm activities, permitting uses that would support and not conflict with the agricultural community, supporting farming, and encouraging agriculture-related businesses on farms.

[124] Mr. Alexander asserted that the RZBL conforms with the direction of sections 15 and 16 of the COP by zoning lands within the Rural designation as Agriculture (AG), Agriculture-Related (AR), Rural Residential (RR), Commercial Rural (CA), Industrial Rural (IA), and with site-specific exceptions, as appropriate based on legally existing land uses.

[125] It is Mr. Alexander's opinion that the key distinctions between the policies for the PAD and the Rural designation are related to the greater range of uses that may be permitted in the Rural designation and the stricter controls on land uses in the PAD. He provided that the Rural designation of the COP permits additional uses, such as active and passive recreation, commercial uses, golf courses, ski resorts, ecotourism, abattoirs, sawmills and hunt camps. He added that the aforementioned uses are reflected in the RZBL, where the uses are permitted in the Rural designation and would be subject to the applicable zoning regulations.

[126] Mr. Alexander proffered that some of the uses listed as permitted in the Rural designation are permitted by the RZBL in the PAD. This is in recognition of existing land uses, which the COP directs may be permitted through the RZBL in section 15.3.8. New developments for uses that are not listed as permitted in the PAD would not be permitted.

[127] When it comes to hunt camps, Mr. Alexander explained that they are only permitted in the "Open Space Restricted" and "Open Space Special" zones of the RZBL. Hunt camps are not permitted in the Agricultural zones, due to the primary use of land in the Agricultural zones being intended to be agriculture. He clarified that the absence of "hunt camp" as a permitted use in the Agricultural zones does not preclude the activity of hunting in accordance with federal, provincial or municipal regulations. Additionally, it does not prohibit the construction of a cottage or a cabin in a "Rural Residential" or "Agriculture" zone, subject to the zoning provisions for a residential use.

[128] The summary of Mr. Alexander's opinion is that the RZBL conforms with the COP and implements the goals, objectives and policies of the PAD and the Rural designation appropriately.

[129] To **Issue 4**, the Tribunal understands the difference between a preferred planning approach and a required approach to achieve conformity. The Tribunal finds that a separate "Rural" zone is not necessary for the non-agricultural land uses, due to them already being provided for in the different rural-type zones, such as Agriculture (AG), Agriculture-related (AR), Rural Residential (RR), Commercial Rural (CA), Industrial Rural (IA), and with already legally existing site-specific exceptions.

[130] While the Tribunal acknowledges Mr. Duguay's concerns regarding loss of as of right permissions, reliance on legal non-conforming status, and missing permitted uses, the Tribunal finds, through the evidence provided by Mr. Alexander, that those concerns do not amount to non-conformity.

[131] The Tribunal notes that a zoning by-law can be more restrictive than an applicable official plan, if it is not in conflict with said official plan. Thus, in order to ensure land use compatibility, a parcel of land designated "Rural" in the COP can be zoned as "Agriculture" and have a more restricted set of land use permissions, as of right, than is provided for in the Rural designation. Parts of the COP applicable to the Rural designation are focused on protection of agricultural land from fragmentation, development and land uses that are unrelated to agriculture. The Agricultural zones in the RZBL appropriately implement the above direction and the other COP policies pertaining to lands designated "Rural".

[132] Overall, the Tribunal finds that the RZBL conforms to the COP.

Issue 5

[133] While none of Issues 1 – 4 were answered "no", the Tribunal now will turn its attention to whether the RZBL should be revised.

[134] In Mr. Duguay's professional opinion, the RZBL should be revised to include a Rural zone with corresponding mapping, as well as to refine the Agricultural zones in order to support the distinction between prime agricultural land and other agricultural land uses.

[135] In relation to Issue 5(b) of the issues, Mr. Duguay's answer is "yes". However, he is of the opinion that a revision of the Agricultural zones to distinguish prime agriculture lands should be done by the City's planners.

[136] Mr. Alexander asserted that there is no policy direction in either the PPS or the COP that would require that the RZBL to be revised to expand permitted uses on agricultural lands within the Rural designation. In addition, there is no policy direction that would require the RZBL to be revised to establish a "Prime Agricultural" zone.

[137] Mr. Alexander stated that zoning by-laws are intended to regulate the use of land and the construction of buildings and structures. They are not intended to identify characteristics of land, such as whether the land is considered to be a Prime Agricultural Area. That is the role of an official plan.

[138] He said that section 4.3.1 of the PPS directs planning authorities to use an Agricultural System Approach to maintain and enhance a geographically continuous agricultural land base and support and foster the long-term economic prosperity and productive capacity of the agri-food network.

[139] Mr. Alexander explained that the PPS defines an Agricultural System as "a system comprised of a group of inter-connected elements that collectively create a viable, thriving agri-food sector". It consists of two components:

- a) An agricultural land base comprised of Prime Agricultural Areas, including Specialty Crop Areas. It may also include rural lands that help to create a continuous productive land base for agriculture; and

- b) An agri-food network which includes agricultural operations, infrastructure, services, and assets important to the viability of the agri-food sector.

[140] In Mr. Alexander's opinion, this definition indicates that the agricultural land base includes both Prime Agricultural Areas and may also include rural lands where they support agriculture.

[141] He stated that section 16 of the COP provides policies that establish agriculture as a priority in the Rural designation and states that the permitted uses of the PAD are also permitted within the Rural designation.

[142] In Mr. Alexander's view, the RZBL implements the direction of the PPS by providing a geographically continuous agricultural land base across the rural areas of the City.

[143] Mr. Alexander opined that neither the PPS nor the COP provide any distinction between the types of agricultural land uses that should be permitted within Prime Agricultural Areas and rural lands or PAD and Rural designation. Therefore, in his opinion, there is no policy direction that would suggest that a Prime Agricultural zone would include any zoning provisions for agricultural uses that would be different from the zoning provisions for agricultural uses on lands that are not considered Prime Agricultural.

[144] Mr. Alexander pointed out that the permitted uses in Mr. Duguay's proposed Rural zone generally align with the permitted uses listed for the Rural designation of the COP. If implemented, as written, each of the uses listed would be permitted to be established on any property within the proposed Rural zone, subject to the general provisions of the RZBL. In Mr. Alexander's opinion, it would allow existing farms to be converted to non-agricultural uses without the submission of a zoning by-law amendment or minor variance application to ensure that the proposed use would conform with the policies of the COP and satisfy other important considerations, such as MDS.

[145] He added that the list of permitted uses for the proposed Rural zone does not conform with the section 16 of the COP for lands within the Rural designation. Under section 16.3 of the COP, the listed uses are only permitted where they will be compatible with, and will not hinder, surrounding agricultural uses and in accordance with the Growth Management policies of section 4.1 of the COP, ensuring an additional level of review before permitting non-agricultural uses in the Rural designation. It would be achieved through a zoning by-law amendment or minor variance application.

[146] Mr. Alexander said that allowing the full list of uses as of right on any property within the Rural designation runs the risk of allowing uses that may not be compatible with adjacent agricultural operations without ensuring conformity with other policies of the COP, and, in his opinion, would lead to significant planning issues that do not satisfy the planning tests and does not represent good planning.

[147] Mr. Alexander asserts that the uses listed in the proposed Rural zone are already permitted by the RZBL as Agriculture-Related or On-Farm Diversified uses in the Agricultural zones, or in the Rural Residential, Commercial Rural, Industrial Rural or Open Space zones. Thus, in Mr. Alexander's opinion, the amendment recommended by Mr. Duguay is inappropriate from a land use planning perspective.

[148] Mr. Alexander brought s. 34 of the Act to the Tribunal's attention, explaining that the intent of a zoning by-law is to regulate land uses. He opined that there is no difference between agricultural land use that occurs on Prime Agricultural land and agricultural land use occurring on rural land. The definition of "Agricultural Uses" in the PPS does not distinguish based on soil quality. He stated that the protections afforded to Prime Agricultural lands are provided through the PPS and COP policies, and the RZBL implements the COP policies.

[149] Overall, it is Mr. Alexander's professional opinion that it is not necessary to revise the RZBL.

[150] On **Issue 5**, and based on the findings on Issues 1 – 4, the Tribunal finds that the RZBL, in its current form, meets those tests without the need for any additional revisions to include a Rural zone. Thus, it is not necessary to revise the RZBL. The Tribunal agrees with Mr. Alexander's assessment that it is the role of the COP to identify characteristics of the land rather than its use.

[151] The Tribunal finds that the RZBL has the appropriate considerations for different land uses that conform to the COP.

[152] The Tribunal finds that it is not necessary to revise the RZBL.

CONCLUSION

[153] The Tribunal finds that the RZBL has appropriate regard to the matters of provincial interest, as outlined in s. 2 of the Act, is consistent with the PPS, conforms to the COP, represents good planning and is in the public interest.

[154] The Tribunal notes that, as part of the appeal, the Appellant did not seek any specific relief to the site. Instead, the Appellant was concerned with lack of a Rural zone in the RZBL.

[155] The Tribunal agrees with the revisions proposed by Mr. Alexander, as outlined in paragraph [19] above.

ORDER

[156] **THE TRIBUNAL ORDERS THAT** the appeal against Rural Zoning By-law No. 2024-113 of the City of Kawartha Lakes is allowed, in part, and the Tribunal directs the City of Kawartha Lakes to amend Table 7-2 of the Rural Zoning By-law No. 2024-113, as follows:

- a) Existing cemeteries in all three Agricultural zones; and,

- b) Dog kennels as “On-Farm Diversified Uses” in all three Agricultural zones.

[157] **THE TRIBUNAL ORDERS THAT**, in all other respects, the appeal is dismissed.

“P. Tomilin”

P. TOMILIN
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.