

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** April 15, 2020

**CASE NO(S):** PL170875

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	Phelps Homes Ltd.
Subject:	By-law No. 2017-70
Municipality:	Township of West Lincoln
OMB Case No.:	PL170875
OMB File No.:	PL170875
OMB Case Name:	Phelps Homes Ltd. v. West Lincoln (Township)

**Heard:** March 7, 2019 in Smithville, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

Phelps Homes Ltd.

Jennifer Meader

Township of West Lincoln

Tom Richardson

**MEMORANDUM OF ORAL DECISION DELIVERED BY JOHN DOUGLAS ON  
MARCH 7, 2019 AND ORDER OF THE TRIBUNAL**

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[1] The Council for the Township of West Lincoln (the "Township") passed a new Comprehensive Zoning By-law No. 2017-70 ("ZBL 2017-70") in June 2017, replacing Zoning By-law No. 79-14 ("ZBL 79-14"). Phelps Homes Ltd. (the "Appellant") appealed

ZBL 2017-70 on a site-specific basis for property legally described as Plan M-97, Part Lot 8 (the “subject property”). The subject property is a 1.7 hectare parcel of land located on Wade Road, north of Twenty Mile Creek and south of the property municipally addressed as 125 Wade Road.

[2] ZBL 2017-70 placed Environmental Conservation (“EC”) and Environmental Protection (“EP”) zoning on the subject property. The Appellant has submitted an appeal to amend ZBL 2017-70 to allow the subject property to be rezoned from the EC Zone to a Low Density Residential Zone (“R1B”) to permit the development of a single detached dwelling on the subject property.

[3] The surrounding land uses to the north, east and west of the subject property are predominantly low density single detached residential. Twenty Mile Creek runs adjacent to the subject property to the south. To the south of Twenty Mile Creek is more single detached residential housing.

[4] The Tribunal was advised that Wade Road does not cross Twenty Mile Creek. The Township Road terminates in a hammerhead turnaround in front of the existing house at 125 Wade Road. The sidewalk continues and connects to a pedestrian bridge that crossed Twenty Mile Creek.

[5] Through ongoing discussions, parties arrived at a settlement agreement in this matter. The Tribunal is being asked to allow the appeal in part and approve the ZBA as it appears in the settlement agreement, which is appended to the end of the Minutes of Settlement (Attachment 1) as Attachment A, and subject to the conditions set out in s. 2 (a) to (f) of the Minutes of Settlement (Attachment 1) to this decision and order.

[6] The Tribunal heard from three witnesses called in support of the settlement reached between the Applicant/Appellant and the Town:

- Following a review of his qualifications and on the consent of the parties, Brian Treble, the Director of Planning for the Town of West Lincoln, was qualified by the Tribunal to provide expert opinion evidence in the field of land use planning.
- David Deluce, a Senior Manager with the Niagara Peninsula Conservation Authority (“NPCA”), was summoned to appear as a witness in this matter. Following a review of his qualifications and on the consent of the parties, the Tribunal qualified Mr. Deluce to provide expert opinion evidence as it relates to NPCA matters.
- Following a review of his qualifications and on the consent of the parties, John Henricks, Principle Planner with the Niagara Planning Group, was qualified by the Tribunal to provide expert land use opinion evidence in the field of land use planning.

[7] The Tribunal heard lay evidence from the following participants in opposition to the ZBA reached through the settlement between the parties: Terry Bell, Vince Renda, and Blake Sorensen.

[8] The participants provided some background related to the subject property particularly with respect to their observations regarding flooding of Twenty Mile Creek. Flooding was the key issue raised by the participants. They noted that the flood waters often inundate much of the subject property and that any future owner of the property will probably want to add fill. They also raised concerns regarding potential impacts on the pedestrian bridge crossing Twenty Mile Creek.

[9] The participants testified that there is a lack of trust with the Applicant and there are some concerns with respect to process. One participant noted that this is a contest of the will of the developer versus the will of the neighbours. He stated that none of the neighbours agrees with the proposal.

[10] One participant raised concerns that the proposal could reduce property values in the area.

[11] The extent to which the concerns of the participants can be considered or determined is set out in the following paragraphs.

[12] The concern that the ZBA may adversely affect property values of neighbouring properties, is not a valid ground for consideration by the Tribunal.

[13] The concerns raised by the participants regarding a lack of trust with this developer, and the idea that the will of the neighbours should prevail over the will of the developer, are also not valid matters for consideration by the Tribunal.

[14] When considering a ZBA, the Tribunal must consider whether the proposal: has had regard for matters of provincial interest under the *Planning Act* (the “Act”); is consistent with the Provincial Policy Statement 2014 (“PPS 2014”); conforms with the Growth Plan for the Greater Golden Horseshoe 2017 (“Growth Plan 2017”), which was in force at the time of the hearing; conforms with the Niagara Region Official Plan (“NROP”) and the Town’s Official Plan (“OP”); and, conforms to the Town’s ZBL 2017-70. At no point in the Act, or the provincial or municipal policy, is there any requirement that a decision on any planning matter be determined by the popularity of the developer or the proposal.

[15] What is left are the planning related concerns of the participants with respect to flooding on the subject lands and the protection of municipal infrastructure such as, the pedestrian bridge over Twenty Mile Creek.

[16] According to the evidence, hydrologic and hydraulic modelling at the site was carried out as part of the Twenty Mile Creek Sub-Watershed Study in 2007. In the fall of 2017, the site was attended by a surveyor on behalf of the Appellant and staff from the NPCA, to re-survey the flood line. The flood line and the location of the top of bank has

been mapped. Based on that mapping, a portion of the subject property is located outside the flood plain, and no closer at any point than 30 m from the top of bank. The developable portion of the subject land has a width that ranges from a minimum of 12.34 metres ("m"), which is also the lot frontage, to a maximum of approximately 17.5 m, and a depth of approximately 80 m (as it appears on Exhibit 8). Mr. Deluce testified that NPCA concerns are addressed on the plan shown in Exhibit 8.

[17] The Tribunal was advised that under the former ZBL 79-14, the subject property had been zoned residential low density with a holding provision ("R1-H"). The holding provision was placed on this lot in order to ensure further agency consideration and public input. The subject property was not to be developed until the Niagara Peninsula Conservation Authority (the "NPCA") had completed a review and mapping refinement. As noted in paragraph 16, the NPCA concerns have been addressed and the Tribunal understands therefore that the condition has been met and holding provision lifted.

[18] The Tribunal finds based on the evidence provided as well as the expert testimony of Mr. Treble, Mr. Deluce and Mr. Henricks, that the portion of the subject property, as described in paragraph [16] and as it appears on Exhibit 8, is above the regulatory flood line and has potential for development.

[19] No portion of the subject property, including the developable portion, has frontage along an open and public Township road allowance. The applicants would be required to extend the travelled road and provide a turn around. The road and turnaround would have to be designed so as not to impact an existing pedestrian bridge across Twenty Mile Creek.

[20] With respect to those matters that the Tribunal must consider when hearing an appeal of the ZBA, the Tribunal heard evidence from Mr. Treble, Mr. Deluce and Mr. Henricks.

[21] Mr. Treble and Mr. Henricks opined that the ZBA reached through the settlement and subject to the conditions, is consistent with the PPS 2014, conforms with the Growth Plan 2017 and has had regard for matters of provincial interest set out in the Act. The proposed development is located within an existing settlement area boundary as per the PPS 2014 and within the Built-up Area under the Growth Plan; represents appropriate intensification through infill development; makes efficient use of existing municipal infrastructure; and ensures protection of natural heritage system lands through public dedication of the non-development portion of the subject lands, and maintains at least a 30 m setback from the top of bank and areas of fish habitat.

[22] Mr. Treble and Mr. Henricks opined that the ZBA reached through the settlement and subject to the conditions, conformed with the NROP. The Region's Core Natural Heritage Map shows the subject property being designated as an Environmental Conservation Area ("ECA") associated with a Valley Shoreline Buffer and a watercourse identified as Type 1 (Critical) Fish Habitat. Development and site alteration in ECAs may be permitted where it has been demonstrated through an Environmental Impact Study ("EIS"), subject to the Region's Environmental Impact Study Guidelines, that there will be no significant impacts over the long term. In accordance with the former protocol between the Region and the NPCA, the NPCA was responsible for the review and comment related to impacts on the natural environment on all planning applications. Based on the mapping work undertaken with respect to the subject property, the NPCA waived the Regional requirement for an EIS, as the subject property contained developable area outside the 30 m setback from both the fish habitat and significant valleyland.

[23] Mr. Treble and Mr. Henricks opined that the ZBA reached through the settlement and subject to the conditions, conformed with the policies of the Township's OP. Mr. Henricks directed the Tribunal to Schedule E of the Township's OP, which shows the subject property designated as Natural Heritage System. He then directed the Tribunal to Township OP, Policy 18.1 a) which states: "Minor refinements to the boundaries of the designations in association with development applications shall not require an

amendment to this Official Plan.” Mr. Henricks testified that in his opinion an amendment to the OP is not required. Policy 10.7.2 l) of the Township’s OP addresses development and site alteration in or adjacent to Environmental Conservation Areas, including possible requirements for an EIS. Mr. Treble testified that an EIS was not done and had not been required by the Region or the NPCA.

[24] Mr. Treble and Mr. Henricks opined that the ZBA reached through the settlement and subject to the conditions represents good planning in the public interest.

[25] The Tribunal was provided no objective expert evidence in support of the concerns and issues raised by the participants. The Tribunal accepts the uncontested and unchallenged evidence of Mr. Treble, Mr. Deluce and Mr. Henricks and finds that the ZBA reached through the settlement agreement which is appended to the end of the Minutes of Settlement (Attachment 1) as Attachment A, and subject to the conditions set out in s. 2 (a) to (f) of the Minutes of Settlement (Attachment 1), meets the tests set out in paragraph [14] of this decision.

## **CONCLUSION**

[26] Upon the findings made, the uncontested and unchallenged expert opinion evidence of Mr. Treble, Mr. Deluce and Mr. Henricks, and the whole of the evidence inclusive of the documentary record, the Tribunal finds that the proposed ZBA is consistent with the PPS, conforms with the Growth Plan and any matters of provincial interest identified in the Act, and represents good planning in the public interest. For these reasons, the Tribunal will allow the appeal in part to approve the amendment to the Township’s Comprehensive ZBL 2017-70, as set out in the agreement between the parties (Attachment 1).

**ORDER**

[27] The Tribunal orders that the appeal is allowed in part to approve an amendment to the Township's Comprehensive ZBL 2017-70 on the terms contained in the amending ZBL, agreed to by the parties, (as set out in Attachment A at the end of the Attachment 1 to this decision and order), subject to the conditions agreed to by the parties, as set out in s. 2 (a) to (f) of Attachment 1 to this decision and order.

*"John Douglas"*

JOHN DOUGLAS  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Tribunals Ontario - Environment and Land Division  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248



## ATTACHMENT 1

### LOCAL PLANNING APPEAL TRIBUNAL

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

Appellant:	Phelps Homes Ltd.
Subject:	By-law No. 2017-70
Municipality:	Township of West Lincoln
OMB Case No.:	PL170875
OMB File No.:	PL170875
OMB Case Name:	Phelps Homes Ltd. v. West Lincoln (Township)

B E T W E E N :

#### **THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN**

Hereinafter referred to as the "Township"

OF THE FIRST PART;

- and -

#### **PHELPS HOMES LTD.**

Hereinafter referred to as "Phelps"

OF THE SECOND PART.

#### **MINUTES OF SETTLEMENT**

**WHEREAS** the Council of the Corporation of the Township of West Lincoln did, on June 26, 2017, pass Comprehensive Zoning By-law No. 2017-70;

**AND WHEREAS** Phelps Homes Ltd. did, on July 24, 2017, appeal to the Ontario Municipal Board the provisions of Comprehensive Zoning By-law No. 2017-70 as they apply to lands located on Wade Road, south of 125 Wade Road;

**AND WHEREAS** the Township and Phelps have undertaken extensive negotiations with respect to the possible resolution of the Phelps appeal;

**AND WHEREAS** the parties have now achieved a resolution of this appeal on the terms set out herein;

**THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:**

1. Phelps and the Township consent to an Order of the Local Planning Appeal Tribunal allowing the appeal of Phelps Homes Ltd., in part, and amending Township of West Lincoln Zoning By-law No. 2017-70 on the terms contained in the amending Zoning By-law attached hereto as Attachment A;
2. Forthwith upon the Tribunal's approval of the amendment to the Township of West Lincoln Zoning By-law 2017-70, in accordance with Attachment A attached hereto, the Township and Phelps shall enter into a Development Agreement, which shall be limited to addressing the following development matters rising from the creation of a building lot pursuant to the terms of this settlement:
  - (a) The design and construction by Phelps of the extension of Wade Road to a hammerhead, with curbing, which shall be subject to approval by Regional Niagara and the Township of West Lincoln;
  - (b) The design and construction of storm water management facilities;
  - (c) Connection to the municipal sewer and water systems;
  - (d) Securities in the form of a bond or a letter of credit and insurance relating to any and all works within the Wade Road allowance;
  - (e) Construction of a municipal sidewalk on the east side of Wade Road from the bridge to the existing sideway;
  - (f) Provision of additional street lighting, if necessary, as determined by a qualified engineer to the satisfaction of the Township.

The Township and Phelps acknowledge and agree that the Development Agreement does not constitute a Site Plan Agreement pursuant to section 41(7) of the *Planning Act*, 1990, R.S.O. c. P.13 and the proposed building lot is not subject to the Township of West Lincoln Site Plan Control By-law No. 2014-18.

3. Phelps and the Township agree that the portion of Wade Road to be improved by Phelps and from which the building lot will be accessed shall be deemed to be a public street for purposes of interpreting the Township of West Lincoln Zoning By-law NO. 2017-70. Furthermore, the Township shall pass any by-laws required under the *Municipal Act*, S.O. 2001, c. 25 to ensure that Wade Road is an open public street at the time of building permit issuance for the building lot.
4. Forthwith upon execution of the Development Agreement contemplated in section 2 above Phelps shall convey to the Township free of all encumbrances the lands generally delineated on Attachment B attached hereto.
5. Phelps and the Township agree to cooperate in providing evidence to the Tribunal in support of the terms contained in Attachment A attached hereto;
6. The parties hereto shall not request an award of costs.
7. It is understood and agreed that these Minutes of Settlement and everything contained herein shall enure to the benefit of and be binding upon the heirs, executors, administrators, mortgagees, successors-in-title and assigns of each of the parties hereto as the case may be and shall constitute a covenant running with the lands.

DATED at West Lincoln, Ontario, this 7<sup>th</sup> March, 2019.

IN WITNESS WHEREOF:

) THE CORPORATION OF THE TOWNSHIP OF  
) WEST LINCOLN, by its solicitors,  
) SULLIVAN MAHONEY LLP  
) Per:  
)

) Thomas A. Richardson  
)  
) Thomas A. Richardson

)  
) PHELPS HOMES LTD., by its solicitors,  
) TURKSTRA MAZZA ASSOCIATES  
) Per:

) Jennifer H. Reader  
)  
) Jennifer H. Reader

BY-LAW NO. 2019-21

**A BY-LAW TO AMEND ZONING BY-LAW NO. 2017- 70, AS  
AMENDED, OF THE TOWNSHIP OF WEST LINCOLN**

**WHEREAS THE TOWNSHIP OF WEST LINCOLN COUNCIL IS EMPOWERED TO  
ENACT THIS BY-LAW BY VIRTUE OF THE PROVISIONS OF SECTION 34 OF THE  
PLANNING ACT, 1990;**

**NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP  
OF WEST LINCOLN HEREBY enacts as follows:**

1. THAT Schedule 'A' Map 'S4' to Zoning By-law No. 2017-70, as amended, is hereby amended by changing the zoning on Plan M97, Part Lot 8, formerly in the Township of South Grimsby, now in the Township of West Lincoln, shown as the subject lands on Schedule 'A', attached hereto and forming part of this By-law.
2. THAT Map 'S4' to Schedule 'A' to Zoning By-law No. 2017- 70, as amended, is hereby amended by changing the zoning on part of the subject lands shown on Schedule 'A', attached hereto and forming part of this By-law from an Environmental Conservation 'EC' zone to a Residential Low Density Type 1B with a site specific exception 'R1B-170' zone.
3. THAT Zoning By-law 2017-70, as amended, is hereby further amended by the addition of a new map S4.1 as attached hereto on Schedule 'B' and forming part of this By-law.
4. THAT Part 6 of Zoning By-law 2017- 70, as amended, is hereby amended by adding the following to Part 13.2:

R1B-170

Permitted Uses:

As per the parent zone.

Regulations:

As per the parent zone; except: a minimum lot frontage of 12 metres, a minimum rear yard setback of 31 metres, and a maximum lot coverage of 36%.

5. THAT all other provisions of By-law 2017-70 continue to apply.
6. AND THAT this By-law shall become effective from and after the date of passing thereof.


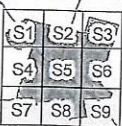
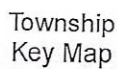
**READ A FIRST, SECOND AND THIRD  
TIME AND FINALLY PASSED THIS  
XX<sup>th</sup> DAY OF MONTH, 2019.**

\_\_\_\_\_  
**MAYOR DAVE BYLSMA**

\_\_\_\_\_  
**JOANNE SCIME, CLERK**



OS

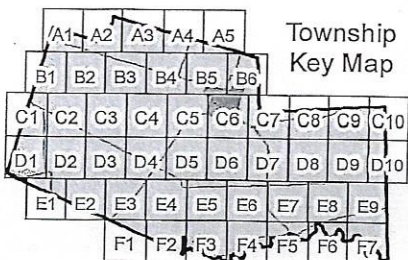
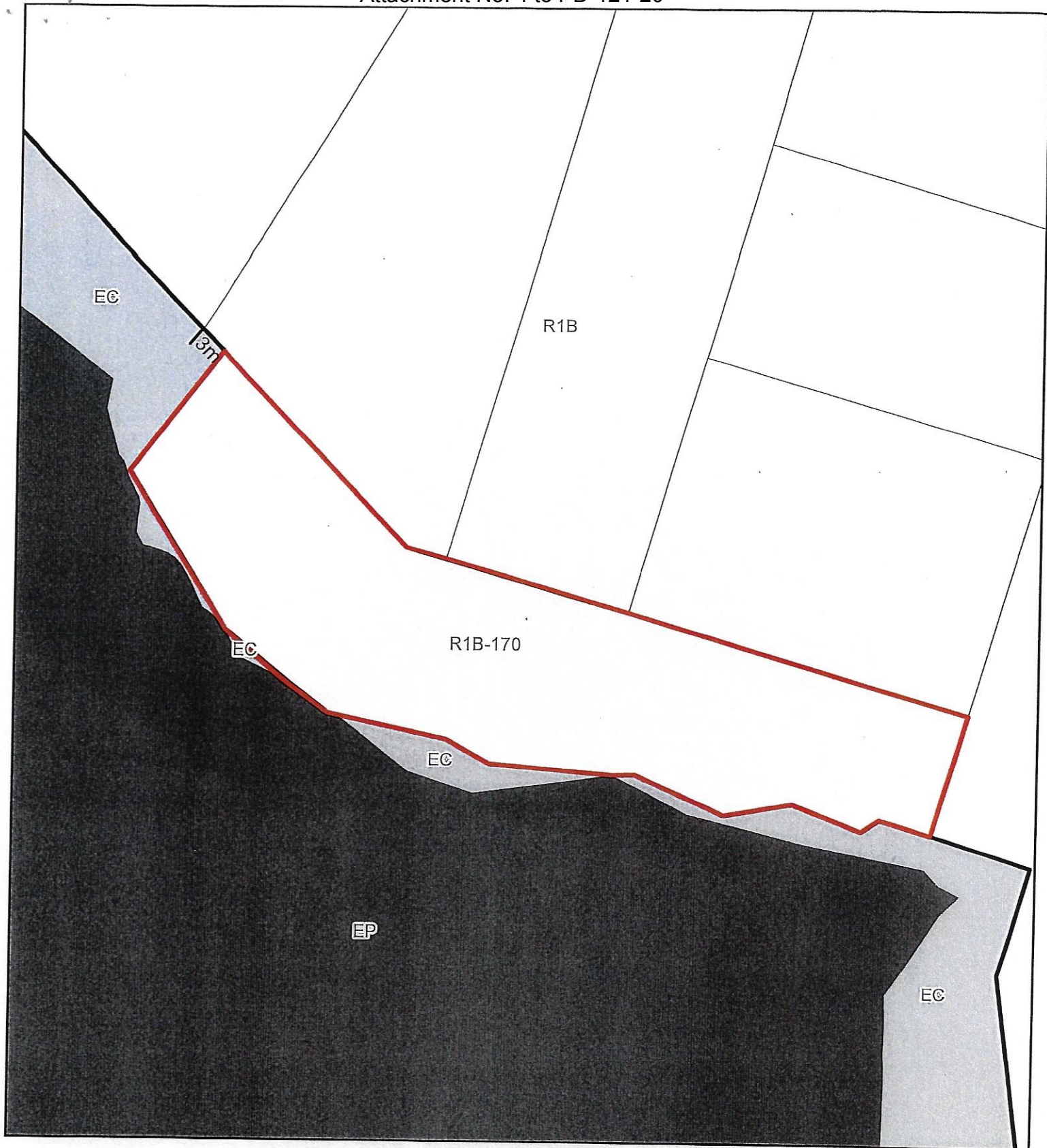
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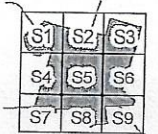
Last Updated: By-Law 2019-21  
Last Updated 05/03/2019

S4





Smithville Key Map



- Settlement Area Boundary
- Zone Boundary
- EC
- EP

# **Township of West Lincoln** Schedule A Zoning By-law No.2017-70

Map

1:500  
 0 10 m



Last Updated: By-Law 2019-21  
 Last Updated 04/03/2019

# **S4.1**

**Attachment No. 4 to PD-121-20**  
**EXPLANATION OF THE PURPOSE AND EFFECT OF BY-LAW NO. 2019-21**

**Location:**

This By-law involves a parcel of land located on the west side of Wade Road, south of Margaret Street and north of the Twenty Mile Creek and is legally described as Plan M97, Part Lot 8, formerly in the Township of South Grimsby, now in the Township of West Lincoln. The property has no municipal address.

**Purpose & Effect:**

This application rezones a portion of the Environmental Conservation 'EC' zone to a Residential Low Density – Type 1B zone 'R1B' with site specific exception 170. The site specific exception will increase the minimum rear yard setback to 31 metres and reduce the maximum permitted lot coverage to 36% and the minimum required lot frontage to 12 metres.

**Public Consultation:**

The Public Meeting was held on April 9<sup>th</sup>, 2018. The Township received verbal and written comments from many neighbours. All comments were considered in the making of the decision by Council.

File: 1601-010-17  
Applicants: Phelps Homes



