

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 03, 2025

CASE NO(S): OLT-23-000360

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:

Snowy Owl Woods Holdings Inc.

Subject:

Application to amend the Zoning By-law –
Refusal or neglect to make a decision

Description:

To permit a development of 43 single
detached dwellings and a block for a 10 to
21-unit apartment building

Reference Number:

ZB02-2022

Property Address:

3852 Ganaraska Road

Municipality/UT:

Port Hope/Northumberland

OLT Case No.:

OLT-23-000360

OLT Lead Case No.:

OLT-23-000360

OLT Case Name:

Snowy Owl Woods Holdings Inc. v. Port
Hope (Municipality)

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:

Snowy Owl Woods Holdings Inc.

Subject:

Proposed Plan of Subdivision – Failure of
Approval Authority to make a decision

Description:

To permit a development of 43 single
detached dwellings and a block for a 10 to
21-unit apartment building

Reference Number:

SU01-2022

Property Address:

3852 Ganaraska Road

Municipality/UT:

Port Hope/Northumberland

OLT Case No.:

OLT-23-000361

OLT Lead Case No.:

OLT-23-000360

OLT Case Name:

Snowy Owl Woods Holdings Inc. v. Port
Hope (Municipality)

Heard:

August 5, 2025, in writing

APPEARANCES:**Parties**

Snowy Owl Woods Holdings Inc. (also known as Mistral Land Development Inc.)
("Appellant/Applicant")

Municipality of Port Hope
("Municipality")

Counsel

Katarzyna Sliwa
Isaiah Banach
Jessica Jakubowski

Jennifer Savini
Lisa Scheulderman

DECISION DELIVERED BY W. DANIEL BEST WITH ORDER AND INTERIM ORDER OF THE TRIBUNAL

[Link to Order](#)

INTRODUCTION

[1] This Decision and Order arises out of the Tribunal's re-hearing of an appeal filed by the Applicant pursuant to ss. 34(11) and 51(34) of the *Planning Act*, R.S.O. 1990, c. P. 13 ("Act"), resulting from the Municipality's failure to make a decision within the statutory timelines for a Zoning By-law Amendment ("ZBA") and Draft Plan of Subdivision ("DPS") to permit a residential subdivision development at the property legally described as Part of Lot 16, Concession 8, Registered Plan 39R-14329 and municipally known as 3852 Ganaraska Road ("Subject Property").

[2] Following a written Decision and Tribunal Order issued by a panel differently constituted, the Appellant submitted a Request for Review ("Request") pursuant to s. 23 of the *Ontario Land Tribunal Act*, 2021, S.O. 2021, c. 4, Sched. 6, as amended ("OLTA") and Rule 25 of the Tribunal's *Rules of Practice and Procedure* ("Rules").

[3] Pursuant to the Tribunal's disposition letter dated July 10, 2025, a re-hearing was ordered, and in accordance with Rule 21 of the Rules, the re-hearing was to be heard in writing.

DECISION

[4] For the reasons that follow, the Tribunal approves the ZBA in part and grants an Interim Order approving the DPS, withholding final approval subject to the submission of conditions of draft approval on consent to be filed with the Tribunal no later than **Tuesday, September 30, 2025.**

BACKGROUND

[5] The Subject Property is located east of Mill Street and north of Ganaraska Road in the Hamlet of Garden Hill. The Subject Property comprises an area of approximately 36.6 hectares ("ha") with approximately 227.7 metres ("m") of frontage on Ganaraska Road, as well as along Mill Street. The southern half of the Subject Property consists of various cropped fields with some hedgerows and areas of vegetation in the vicinity of the watercourses, whereas the northern portion is heavily forested with a high voltage hydro easement bisecting through the property east to west. Access to the Subject Property is currently gained from Ganaraska Road.

[6] The proposed development on the Subject Property will comprise of approximately 20 ha. All servicing will be with individual private septic systems and wells.

[7] The DPS identifies three stormwater management blocks with ponds and a drainage easement, and two blocks dedicated to protection and/or compensation of natural features. One block will encompass the existing hydro transmission line easement north of the development area, and a block will be comprised of the balance of the Subject Property north of the hydro lines that will not be developed at this time.

[8] The Subject Property includes a mixed topography that generally slopes gradually downward from north to south, towards Ganaraska Road. The topography in the southern half is relatively flat from decades of agricultural activity. The northern

portion of the site has a more variable topography, dominated by upland ridges, vernal pools, depressional wetlands, and watercourses.

[9] The Subject Property is bound by existing residential development to the east, Ganaraska Road to the south, existing residential development and Mill Street to the west, and rural lands to the north.

[10] The Subject Property is designated “Hamlet”, “General Agriculture”, “Natural Environment”, and “Floodplain” in the Municipality of Port Hope Official Plan (“OP”) and “Rural Settlement Area” in the County of Northumberland Official Plan (“COP”).

[11] The ZBA is to rezone the Subject Property from “Future Development ‘FD’ Zone” to site specific “Hamlet Residential One-Exception (RESV1-***)” and “Hamlet Residential Two-Exception (RESV2-***)”, “Open Space (OS)” and “Environmental Protection (EP)Zone” to permit the proposed land uses. The portion of the Subject Property located north of the hydro lines, which is currently zoned “Rural (RU) Zone” and is located outside of the Hamlet, will not be changed as a result of the ZBA.

[12] The DPS is required to facilitate the development of 43 single detached dwellings and one block for a 10 to 21-unit apartment building on the Subject Property.

[13] At the time of the ZBA and DPS applications and the Hearing, the Garden Hill Earth Science Area of Natural and Scientific Interest (“Earth Science ANSI”) was located on the Subject Property, adjacent lands, and adjacent landscape extending to the northeast and southwest of the Subject Property.

[14] A Hearing of the Merits took place on September 11-13, 2024 and September 20, 2024 (“Hearing”).

[15] On April 14, 2025, a written Decision and Tribunal Order (“April Decision”) was issued dismissing the Appeal. The Appeal was dismissed because the Tribunal was not satisfied that the proposed development would have no negative impact on the Subject

Lands found in the Earth Science ANSI. The Tribunal further found that the applications were not consistent with the Provincial Planning Statement, 2024 (“PPS”) and did not conform to the COP or OP. The Appellant filed the Request with the Tribunal on May 14, 2025.

[16] On May 22, 2025, the Chair issued a Direction that the Municipality file a Response to the Request (“Response”) by June 12, 2025, and that the Appellant was invited to file a Reply to the Response (“Reply”) by June 26, 2025.

[17] Correspondence from the Ministry of Natural Resources (“MNR”) to the Municipality dated May 23, 2025, was submitted to the Tribunal to be considered as part of the Request.

[18] The correspondence identified that a review of the Earth Science ANSI had resulted in a minor boundary adjustment as historic agricultural land uses had resulted in a degradation and that the Subject Lands no longer contained the representative geological features that the Earth Science ANSI originally identified.

[19] On July 10, 2025, the Chair directed that the matter would be re-heard in writing, solely to the single issue as to whether there would be “no negative impacts” based on materials already filed including the new evidence submitted with the request.

POSITION OF THE PARTIES

Position of the Appellant

[20] The Appellant advised that the Parties scoped the issues leading up to the Hearing and agreed that only one substantial issue remained. They asked the Tribunal to determine whether it could be demonstrated that the residential development would have no negative impacts on the natural features in the Earth Science ANSI.

[21] The Appellant stated that the ecological functions part of the “no negative impacts” test was not the issue for the Hearing, but evidence was provided to the Tribunal that matters of natural heritage and ecology were resolved. Based on the foregoing, no ecologists were called in the Hearing.

[22] At the Hearing, the Appellant’s evidence focused on the Subject Property. The Tribunal did receive evidence regarding other features within the Earth Science ANSI.

[23] At the Hearing, Dr. Carolyn Eyles was qualified to provide expert evidence in the area of glacial morphology and glacial sedimentology.

[24] Dr. Eyles analyzed the information related to landforms on the Subject Property and surrounding area of 2,471 acres of the Earth Science ANSI using Light Detection and Ranging (“LiDAR”). Dr. Eyles also analyzed 125 water well records respecting the Subject Property and areas surrounding the Subject Property.

[25] Dr. Eyles concluded that the proposed development would have no negative impacts on the Earth Science ANSI and that there were no additional tests that could be carried out on Earth Science ANSI lands outside of the Subject Property without trespassing on lands not owned by the Appellant.

[26] At the Hearing, Dr. Paul Villard was qualified in the areas of geomorphology, process sedimentology, and erosion.

[27] Dr. Villard supported the findings of Dr. Eyles that the proposed development on the Subject Property would not result in negative impacts to the Earth Science ANSI.

[28] Dr. Villard stated that since the natural features are geological in nature, the proposed site alteration will not impact geological features.

[29] Dr. Villard advised that the Subject Property and areas surrounding the Subject Property, have been actively disturbed for at least 100 years due to straight line tilling

practices, known to provoke soil erosion and landscape modification. He continued that based on the degradation of the Subject Property; the proposed development will not impact the natural geomorphic landform features within the Earth Science ANSI.

[30] Dr. Villard confirmed that in preparing the Mitigation Plan Report, he considered the “no negative impacts” test as it relates to the broader Earth Science ANSI and concluded that there were no negative impacts to the lands to the north and to the lands in the broader Earth Science ANSI.

[31] Kent Randall is a land use planning consultant who was qualified at the Hearing to provide opinion evidence in land-use planning.

[32] Mr. Randall advised that through the Agreed Statement of Facts (“ASF”), the ecology and natural heritage matters identified by the ecologists pertained to significant woodlands, significant wildlife habitat, and fish habitat. The ecology experts agreed that these natural heritage, life science ecology and natural heritage issues had been addressed sufficiently and were fully resolved.

[33] Mr. Randall advised that his opinion that the proposed development would have no negative impact on the Earth Science ANSI was informed by the technical evidence of Dr. Eyles and Dr. Villard.

[34] Mr. Randall opined that the ZBA and DPS Applications have appropriate regard for matters of provincial interest, and comply with the requirements of the Act, are consistent with the PPS, and conform to the COP and OP.

[35] The Appellant argued that the Municipality and its experts did not raise a credible evidentiary basis that the proposed development would cause negative impacts on natural features.

[36] The Appellant requested that the Tribunal approve the ZBA and withhold the final approval of the DPS until conditions are submitted on consent. The Appellant was

proposing that the conditions would be filed with the Tribunal no later than **August 4, 2025**.

Position of the Municipality

[37] The Municipal position is drawn from its Response to the Request.

[38] The Municipality confirmed that through the efforts of the Parties and their experts, all issues for the ZBA and DPS were resolved, save and except whether they were consistent with the (then) 2020 Provincial Policy Statement. Subsequent to the Hearing of the appeal and prior to the Decision, the Parties confirmed the same issues carried forward into the PPS.

[39] The PPS issue related to the designation of the Subject Property as part of the Earth Science ANSI and whether the Appellant had demonstrated that the “no negative impact” test had been met.

[40] At the commencement of the Hearing, the Municipality sought a motion requesting that the Tribunal adjourn the Hearing of the appeal pending the Appellant seeking a Provincial review of the Earth Science ANSI. The motion was denied, and the matter proceeded to a hearing on the Earth Science ANSI issue.

[41] The Tribunal was advised through the Response of the Municipality that removing the Subject Property from the Earth Science ANSI resolved the Municipality’s last remaining issue in the appeal.

[42] The Municipality stated that if the MNR had confirmed the minor boundary amendment prior to the Hearing, the Hearing would likely not have been necessary.

[43] The Municipality advised that based on the minor boundary amendment removing the Subject Lands from the Earth Science ANSI, the Tribunal should approve

the ZBA and grant an Interim Order approving the DPS, withholding final approval subject to submission of conditions of draft approval on consent.

[44] The Municipality also requested that it should have the authority to clear the conditions of draft plan approval and to administer final approval of the DPS.

LEGAL CONTEXT

[45] When considering an appeal of an application to amend a ZBA filed pursuant to s. 34 of the Act and an appeal of an application filed pursuant to s. 51 the Act, the Tribunal must have regard to matters of Provincial interest as set out in s. 2 of the Act and regard to the decision of the Council and the information considered by it pursuant to s.2.1(1) of the Act. Section 3(5) of the Act requires that decisions of the Tribunal affecting planning matters be consistent with the PPS. The Tribunal must also be satisfied that the ZBA conforms with the official plans in effect. When considering a DPS, regard is required to the matters set out in s. 51(24) of the Act.

[46] In consideration of the statutory requirements, as set out above, the Tribunal must be satisfied that the ZBA, DPS, and conditions represent good planning and are in the public interest.

FINDINGS AND ANALYSIS

[47] The Tribunal was persuaded by the uncontroverted evidence of Dr. Eyles and Dr. Villard regarding the Earth Science ANSI on the Subject Property and areas surrounding the Subject Property.

[48] The Tribunal finds that MNR's removal of the Subject Property from the Earth Science ANSI boundary renders the single issue before the Tribunal moot.

[49] It is Mr. Randall's uncontroverted evidence that the proposed development to be implemented through the ZBA and DPS addresses several matters of Provincial

interest, is consistent with the PPS in conformance with the COP and OP, represents good planning, and is in the public interest.

[50] In making its Decision on the appeal before it, the Tribunal has had regard to matters of Provincial interest as set out in s. 2 of the Act. The Tribunal is satisfied that the proposed ZBA and DPS speaks to matters of Provincial interest including:

- (a) the protection of ecological systems, including natural areas, features and functions;
- (c) the conservation and management of natural resources and the mineral resource base;
- (h) the orderly development of safe and healthy communities;
- (j) the adequate provision of a full range of housing, including affordable housing;
- (o) the protection of public health and safety;
- (p) the appropriate location of growth and development;
- (q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians;
- (r) the promotion of built form that,
 - (i) is well-designed,
 - (ii) encourages a sense of place, and
 - (iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant;

[51] Overall, the Tribunal finds that the proposed development respects the existing built form of the neighbourhood and is designed to mitigate impacts to natural features. The proposed development is compatible with existing development within the Hamlet while providing an opportunity for increased density and alternative housing.

[52] The Tribunal is satisfied that the proposed development is consistent with the PPS. The proposed development meets the intent of policies in Chapter 2, 3, 4, and 5 of the PPS as highlighted below:

- The proposed development will provide additional residential growth within the Hamlet. The land-use pattern provides for an efficient use of the property and provides for the highest unit density with consideration for

natural heritage features, natural hazards, and the existing development within the Hamlet. The proposed development will not require any major infrastructure upgrades, particularly to the existing road network, and will not require the expansion of infrastructure.

- The Subject Property is within a settlement area, which has been identified as an area for residential growth within the Municipality and is suitable for the proposed use. The proposed development will provide a form of housing that is in high demand and is of a suitable density for the Hamlet of Garden Hill. The proposed development will meet the future social, health, and well-being requirements of current and future residents of the Municipality.
- Based on the identification of features on the Subject Property and the proposed mitigative measure that will be taken to protect those features, the proposed development can occur that will not adversely impact the natural heritage and hydrological features and function on or adjacent to the Subject Property.

[53] The COP designates the Subject Property as a Rural Settlement Area. The proposed development conforms with the COP:

- By maintaining and enhancing the character and identity of rural settlement areas.
- By providing a range of housing types to accommodate persons with diverse social and economic backgrounds and needs provided appropriate servicing is available.
- The proposed development will be serviced by private wells and septic systems. The Hydrogeological Study and Functional Site Servicing and Stormwater Management Report supporting this proposal indicate that the proposed development will be adequately serviced.
- By providing a range of housing types and densities to meet the needs of current and future residents.

[54] The OP designates the Subject Property as “Hamlet”, “General Agriculture”, “Natural Environment” and “Floodplain”. The proposed development is in conformity with the OP as:

- The development proposal features single detached dwellings and a multi-storey apartment building, both permitted uses in the Hamlet Designation. To discourage sprawling development, the proposed lots are ‘in-depth’ from the existing strip of residential development on Ganaraska Road, within the Hamlet.
- An Environmental Impact Study (“EIS”) was completed in support of the proposed development, provided that the recommendations as outlined in the EIS are implemented accordingly.
- Hydrogeological and Servicing Assessment and Stormwater Management Reports demonstrate that surface and groundwater is protected and maintained.

[55] The Tribunal accepts the uncontroverted planning opinion evidence of Mr. Randall in its entirety. The Tribunal is satisfied that the proposed development has appropriate regard for matters of Provincial interest, is consistent with the PPS, is in conformity with the COP and OP, and suitably addresses the requirements of s. 51(24) of the Act. The proposed development constitutes good land use planning for the Subject Property as it provides much needed housing supply and housing choice to the Hamlet. The proposed development is in the public interest as it will supply much needed housing to the community in an area identified for growth.

ORDER

[56] **THE TRIBUNAL ORDERS THAT** the Zoning By-law Amendment appeal is allowed, in part, and directs the Municipality of Port Hope to amend the Zoning By-law 20/2010 as set out in **Attachment 1** to this Order and Interim Order. The Tribunal

authorizes the Clerk of the Municipality to assign a number to this By-law for record-keeping purposes.

INTERIM ORDER

[57] **THE TRIBUNAL ORDERS THAT** the Draft Plan of Subdivision is allowed, in part on an interim basis, and the draft plan shown on the plan prepared by Monument Geomatics dated February 16, 2023, comprising of Plan 39R-14329, Part of Lot 16, Concession 8, Municipality of Port Hope, County of Northumberland, set out in **Attachment 2** to this Interim Order, is approved in principle.

[58] The Tribunal will withhold the issuance of its Final Order contingent upon receiving and approving the draft plan conditions, to be submitted by the Municipal Solicitor on consent of the Parties.

[59] **THE TRIBUNAL ORDERS THAT** pursuant to subsection 51(56.1) of the *Planning Act*, the Municipality shall have the authority to clear the conditions of the Draft Plan Approval and to administer final approval of the Plan of Subdivision for the purposes of subsection 51(58) of the Act. In the event that there are any difficulties implementing any of the conditions of the Draft Plan Approval, or if any changes are required to be made to the Draft Plan, the Tribunal may be spoken to.

[60] The Member will remain seized for the purposes of reviewing and approving the final Draft Plan conditions and the issuance of the Final Order.

[61] If the Parties do not submit the final Draft Plan conditions and provide confirmation that all other contingent pre-requisites to the issuance of the Final Order set out in paragraph [58] above have been satisfied, and do not request the issuance of the Final Order by **Tuesday, September 30, 2025**, the Applicant and the Municipality shall provide a written status report to the Tribunal by that date, as to the timing of the expected confirmation and submission of the final form of the draft plan conditions.

[62] The Tribunal may, as necessary, arrange the further attendance of the Parties by Telephone Conference Call to determine the additional timelines and deadline for the submission of the satisfaction of the contingent prerequisites, and the issuance of the Final Order.

“W. Daniel Best”

W. DANIEL BEST
MEMBER

Ontario Land Tribunal

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

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

ATTACHMENT 1**CORPORATION OF THE MUNICIPALITY OF PORT HOPE****BY-LAW NO. XX/2024**

Being a By-law Under the Provisions of Section 34 of the Planning Act, R.S.O., 1990, c.P.13, as Amended, to Amend Zoning By-law 20/2010, as Amended, of the Corporation of the Municipality of Port Hope, for lands legally described as Part of Lot 16, Concession 8, former Township of Hope in the Municipality of Port Hope, County of Northumberland.

WHEREAS Zoning By-law No. 20/2010, as amended, was passed under authority of Section 34 of the Planning Act, R.S.O. 1990, c.P.13, as amended;

AND WHEREAS this By-law conforms with the general intent of the Municipality of Port Hope Official Plan, as amended;

AND WHEREAS on August 5, 2022 the Council of The Corporation of the Municipality of Port Hope conducted a public meeting, in regard to the proposed zoning, as required by Section 34(12) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended;

AND WHEREAS the Council of The Corporation of the Municipality of Port Hope deems it advisable to amend Zoning By-law No. 20/2010, as otherwise amended, with respect to the above described lands, and under the provisions of the *Planning Act* has the authority to do so;

NOW THEREFORE the Council of The Corporation of the Municipality of Port Hope **ENACTS** as follows:

1. THAT Schedule "B" – Sheet 23 (Zone Map) forming part of Zoning By-law 20/2010, as amended, is hereby amended by changing the zone classification on the subject lands identified on Schedule "A" to this By-law hereto from the current Future Development 'FD' Zone to Hamlet Residential One – Exception *** (RESV1-***), Hamlet Residential Two – Exception *** (RESV2-***), Environmental Protection (EP) Zone, and Open Space (OS) Zone, in accordance with Schedule "A" attached hereto and forming part of this By-law;
2. THAT Part 12, entitled "EXCEPTIONS" of Zoning By-law No. 20/2010, as otherwise amended, is hereby amended by adding the following to Part 12 – Exceptions:

Col.1	Col.2	Col.3	Column 4	Column 5	Column 6
Zone	Exception Number	Additional Permitted Uses	Only Permitted Uses	Uses Prohibited	Special Provisions
RESV1	*** (xx/2022) RESV1-***				(i) Minimum required Lot Frontage – 20 metres
RESV2	*** (xx/2022) RESV2-***				(i) Minimum Lot Area – 5,700 square metres (ii) Maximum Number of Apartment dwelling units: a) 18 1-bedroom units; or b) Nine (9) 2-bedroom units; or c) a combination of a) and b) (iii) All dwelling units shall only be serviced with a sewage system as defined in O. Reg 332/12 under the <i>Building Code Act</i>

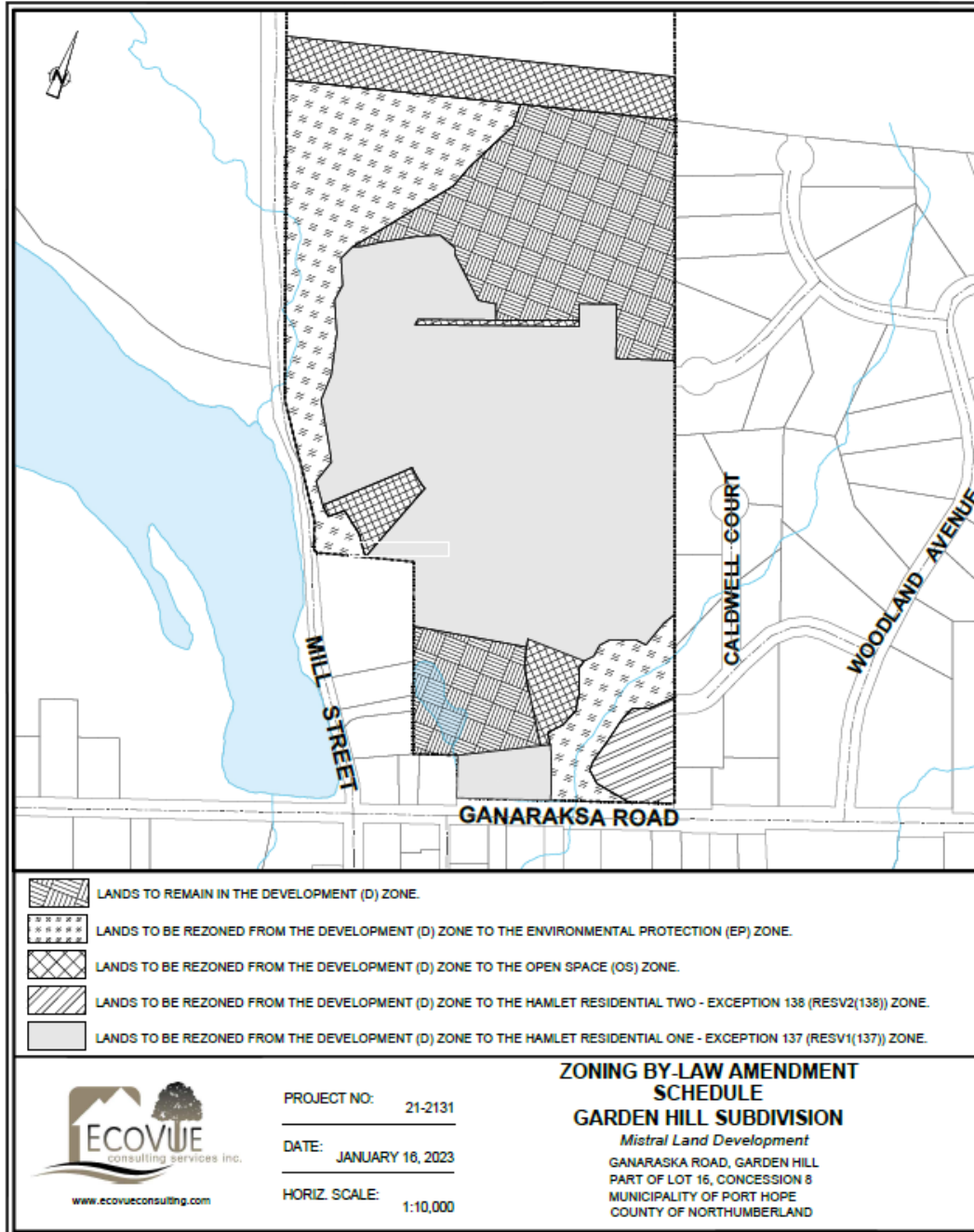
3. THAT Zoning By-law No. 20/2010, as otherwise amended, is hereby amended to give effect to the foregoing, but Zoning By-law No. 20/2010, as otherwise amended, shall in all respects remain in force and effect save as same may be otherwise amended or hereinafter dealt with.

4. THAT this By-law shall come into force on the date it is passed by the Council of The Corporation of the Municipality of Port Hope, subject to the applicable provisions of the *Planning Act*, R.S.O. 1990, c.P.13, as amended.

READ A FIRST, SECOND AND THIRD TIME and finally passed on the xx day of ____, 2024.

Olena Hankivsky, Mayor

Shrishma Davé, Municipal Clerk



ATTACHMENT 2

