

# Lake Erie vs Lakewood Beach Property



*.... Lake Erie always wins*

Prepared by **SAVE WAINFLEET – KEEPING IT RURAL**

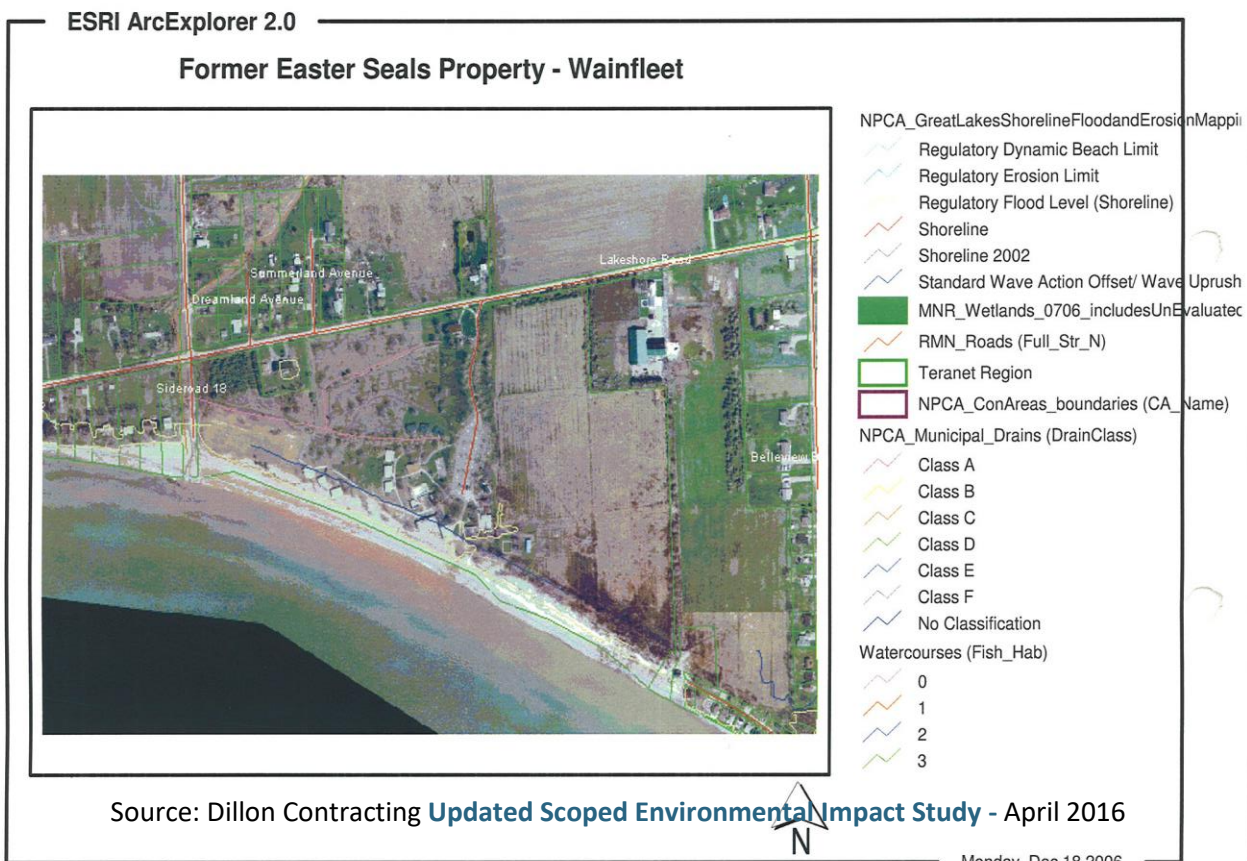
**MARCH, 2020**

*Photograph - the Casey Drain April 4, 2018*

# An Introduction - A History of Concern

The property in question is located on Lots 16 and 17, Concession 1, 11705 Lakeshore Road West, within the Township of Wainfleet. The entire property consists of 2 parcels of land, one owned by Lakewood Beach Properties (2006) and the other parcel is owned by the Niagara Peninsula Conservation Authority (NPCA – purchased 2014).

- (a) The property has been contentious since its purchase by a developer in October 2006.
- (b) There have been three OMB Hearings (2008, 2010, 2014 and a fourth time in 2017 was withdrawn due to threats of law suits and the limitations placed by the OMB on what could be presented).
- (c) Problems raised at the first OMB (2008) hearing have still not been fully addressed, notably the Casey Drain and the removal of the Septic Systems now leeching into Lake Erie.
- (d) Every step has required an amendment:
  - Zoning from Open Space to Lakeshore Residential and then to site specific zoning,
  - Condominium Act used not the Official Plan allowing higher housing density,
  - MDS has been further compromised for the neighbouring horse farms,
  - Communal Water and Waste Water system, which is awaiting final approval, was not allowed in Wainfleet Official Plan until a site specific exception was made and included in the Official Plan 2014 on the insistence of the Region.
- (e) The Region was approached by the Township of Wainfleet to purchase the land for use by all of Niagara as a recreational beach access and park. The resolution lost by one vote.
- (f) There have been numerous Township Planners involved leading to some discontinuity and a lack of appreciation/acknowledgement of what the neighbours have had to endure.



# 1. The Purchase – October 2006

The Lakewood Beach Property was originally owned by the Graybiels, a farming family. It was sold in 1953 for \$50,000.00 to the Easter Seals/Ontario Society for Crippled Children for use as a Summer Camp for children with disabilities. Although nothing was written, it was understood by the Graybiel family that this property was to be used, in perpetuity, for the sole use as a summer camp for children and to be owned by a charity.

Although another Charity, “Red Roof Retreat”, attempted to purchase the land, it was nonetheless sold to the current developer in October 2006.

# 2. The Significance of Dates: October 2006 and Official Plan

The dates are significant as the property was designated in Official Plan (2000) as Lakeshore Residential with the beach marked ‘subject to severe flooding and erosion during storm conditions and high water levels’. However in the Zoning By-Laws in force in 2007 it was zoned O1 – Open Space. (see Appendix A)

At the time of the purchase in October of 2006 the Provincial Plan “Places to Grow – 2005” was in effect and it stated in the section (*emphasis in bold added*)

## 2.2.9 Rural Areas.

*“New multiple lots and units for residential development will be directed to settlement areas, and may be allowed in rural areas in site-specific locations with approved zoning or designation that permits this type of development in a municipal official plan, as of the effective date of this Plan.” – June 16, 2006*

In the later version of 2017 it states:

*“New multiple lots or units for residential development will be directed to settlement areas, but may be allowed on rural lands in site-specific locations **with approved zoning or designation in an official plan that permitted this type of development as of June 16, 2006.**” – July 1, 2017*

This brings into question the initial decision to approve: Why was this land made available for a condominium development at all? The Provincial guideline, to our knowledge, was never brought to the attention of the deciding bodies. It did not have the proper zoning approval as of June 16, 2006. In the 2000 version of the Wainfleet Official Plan there is a cautionary note “Shoreline areas subject to severe flooding and erosion during storm conditions and high water levels” (Appendix A).

Giving the property a site specific designation was over the objection of Council at the time (OMB 2014) and was on the strong recommendation, some say the insistence, of the Region.



### 3. The Description of the land

In several of the developer's reports the land is described as 'low-lying' and as an old 'bog' with marsh a swamp areas mapped out.



Source: Dillon Contracting Report – April 2016 (Status of map is 'draft' dated 2015)

Green areas (CUP) = wooded areas, MA = Marsh and SW= Swamp (Yellow, Orange and Red)

**Note:** the implications are that the current large septic field in the South-West corner is in a MARSH and the Proposed Communal System for the North East corner will also be in marsh land. The White Pine grove in the North West Corner is now reduced by 90%.

The following is a description from the Archeological Survey – December, 2010 by J. K. Jouppien-Heritage Resources Consultant Inc. in **Analysis and Conclusions** (Emphasis added).

**The geomorphological features of the site provide a likely explanation for the lack of evidence of human occupation.** The south perimeter of the site follows the north shoreline of Lake Erie running into beach up to 20 meters deep. The prevailing wind patterns typically are heavy south to north winds that sweep across the warm lake. As a result the winds accumulate substantial moisture from the warm lake, its temperatures remaining warmer than the surrounding land temperatures for most of the year. When the warm moisture-laden air currents contact the cooler land mass of the north shore the conditions generally result in **heavy and often ferocious winds**. The winds sweep over the sand beach creating a continuous berm, or dune along the juncture of the sand beach/vegetational tree line. In places this dune was observed to have accumulated up to 2 meters in height. **When high tide and storms occur the dune is swept over by lake waters** which become trapped on the north side of the berm which comprises the area of the subject site. **This phenomenon creates a flood plain in the low lying areas to the north of the dune.** A long history of this phenomenon was recorded in the soil profiles of several of the control test trenches and illustrated in this report. In these instances a deep buried horizon of rich moist humus occurs as a top horizon, which illustrates the **long term existence of these bog-like conditions**. These very conditions have led to current Ministry of Natural Resources concerns and monitoring of the site regarding wet-land conservation for reptile, amphibians and insect spawning and breeding grounds. **Even in its current state, the site is too low lying to have been selected as a native camp site.**

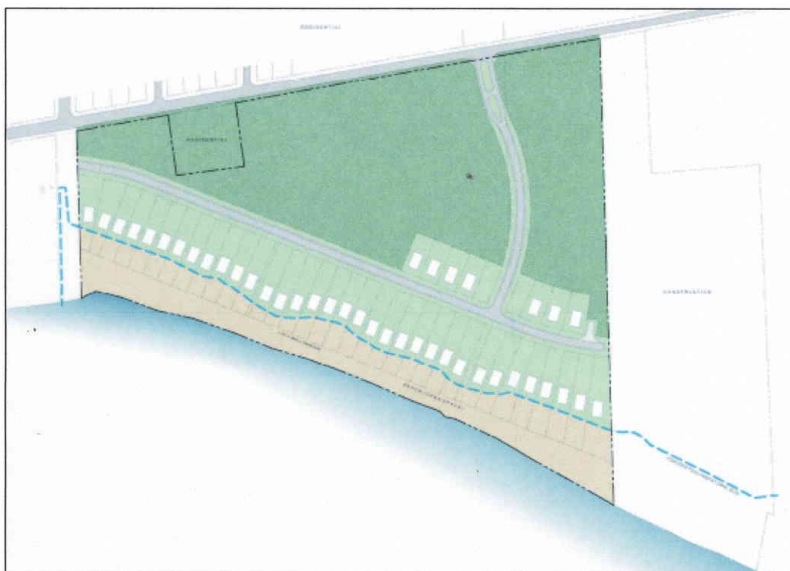


## 4. The Proposal – Draft Plan of Condominium



Source: Dillon Construction **Updated Scoped Environmental Impact Study** - April 2016  
Prepared by Sco-Terra Consulting Group February, 2016

In 2014 the Township of Wainfleet Council gave the developer the 'go ahead' for 41 units, 35 of which are positioned just behind the MNR Fowler's Toad Habitat Development Limit.



Source: The map to the left was prepared by Quartek Group Inc. for The Planning Justification Report – 2014. It shows the now approved location for the units.

NOTE: The 35 units are placed as close as possible to the Fowler's Toad Habitat (blue dotted line) at the lakeshore side of the property.

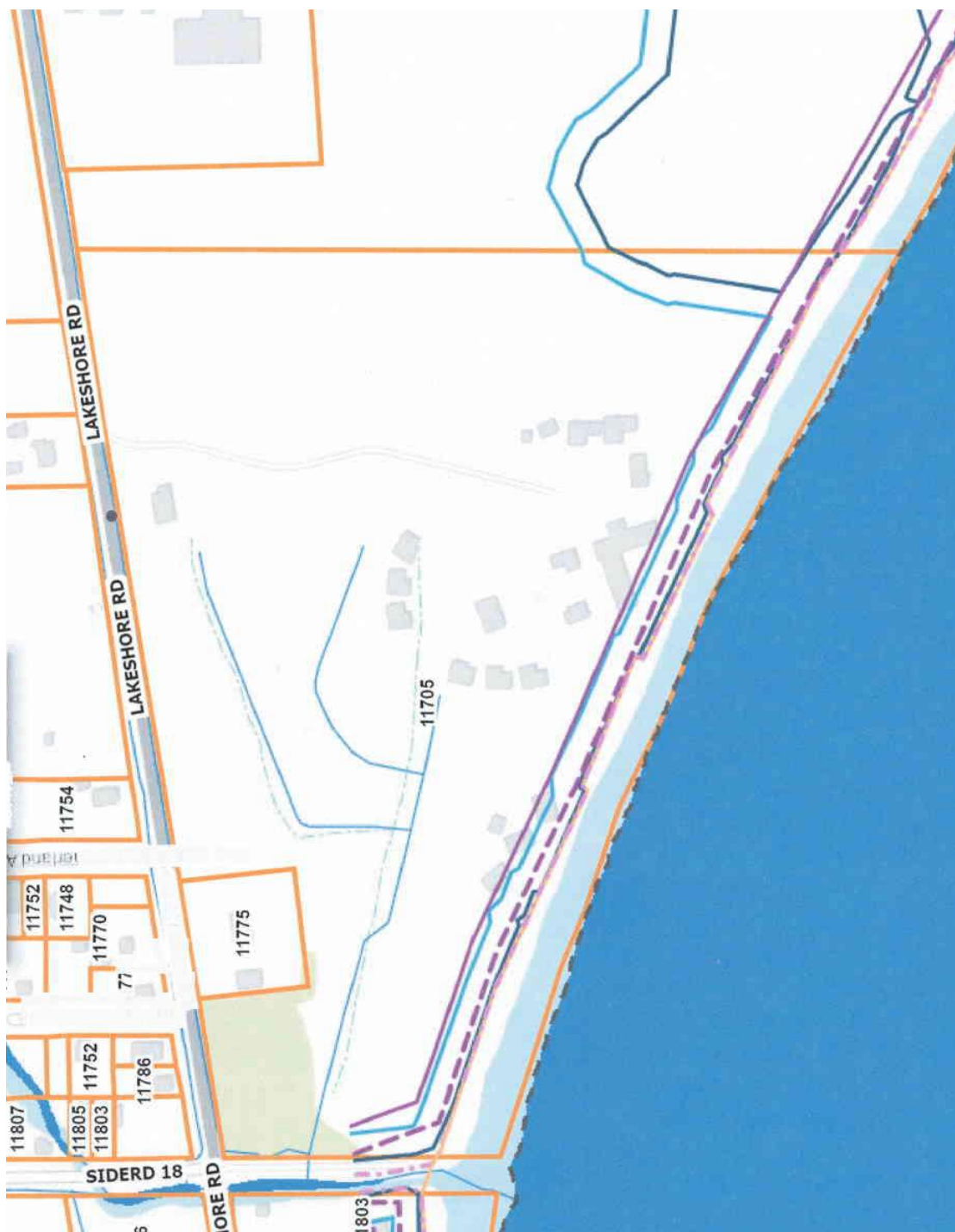
The blue line indicates the northern edge of the Fowler's Toad Habitat.

## 5. NPCA Mapping – What it Shows



NPCA Map #1 – NPCA Approximate Regulation Lands

All the water outlets, e.g., the Casey Drain, the drainage on the property, and the shoreline are regulated by NPCA.



NPCA Map #2 – Shoreline Flood/Erosion Inventory

NOTE: Regulatory Erosion Hazard Limit - solid purple line  
Regulatory Flood Hazard Limit – light blue solid line  
Great Lakes Regulatory Flood Level – dark blue/green solid line  
Stable Slope Allowance – Purple Dash  
Regulatory Dynamic Beach Reaches – pale yellow with purple for the Toe of the Bluff.



## 6. Persistent High Water Levels 2018-2020

According to the US Army Corps of Engineers with the NOAA and the Canadian Hydrographic Service, the 2019 average Lake Erie Water Level was 174.59 metres. In December the mean was 174.68. In January to the 15<sup>th</sup> of the month the mean was still 174.68 metres. (See Appendix B)



NPCA Map #3 – Regulated Flood Plain and Regulated Shoreline Extent

NOTE: 175.0 metres above sea level is marked on the map as a guideline. This is an important marker as it is the current average water level for Lake Erie (174.68 m in December, 2019).

## 7. Lakewood Beach Designs vs 175 m

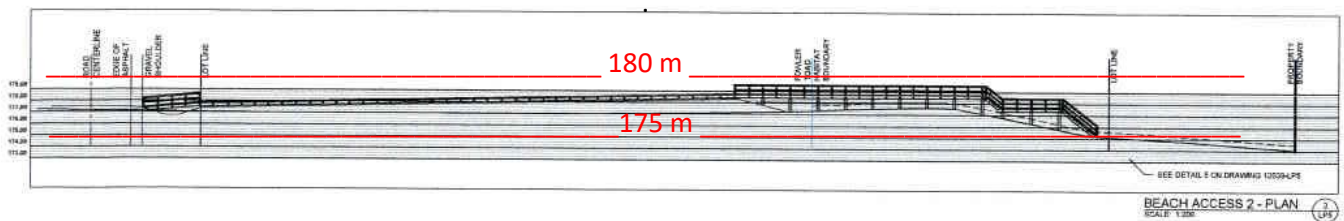
The Storm of October 31/November 1 2019 caused a lot of property damage and erosion along the Lake Erie Shoreline in Wainfleet. It was recorded to have waves at 16.5 feet which translates into just over 5 metres. And on November 1<sup>st</sup> the lake level at Port Colborne was 175.039 m above sea level. That put the waves at over 180 metres. Subsequent storms, high winds and wave action have increased the damage and erosion. The shore line is properly classified in this area as a Dynamic Beach Hazard (Provincial Planning Act), changing the shoreline daily.



View from the beach of the proposed beach access stairs – see design below.



Source: Design Perspectives from the Public Information Open House – Greenland Report Oct 2016



Source – T Johns Consulting - November 2016 LP 4 Beach Access

NOTE: the scale is on the left side: 175 m above sea level is the third line from the bottom. The top line is 179 m. 174.59 m was the AVERAGE height of the water level (above sea level) in Lake Erie in 2019 and the waves of October 31, 2019 reached at least 180m above sea level. (Appendix C)

If the developer had started to build in 2019 as he had planned, the beach access stairs would have been washed away with the dune and most of the houses just behind would have been flooded with a few sustaining structural damage.

This opinion is based on what has been observed and experienced on other properties in the area and the documentation of the current erosion to the Lakewood Beach Properties Shoreline.





Source: Planning Justification Report by Quartex Group Inc. November 2014  
'Figure 4: Existing Storm water outlet onto beach, 2014' page 8



The same storm drain photographed early November 2019.

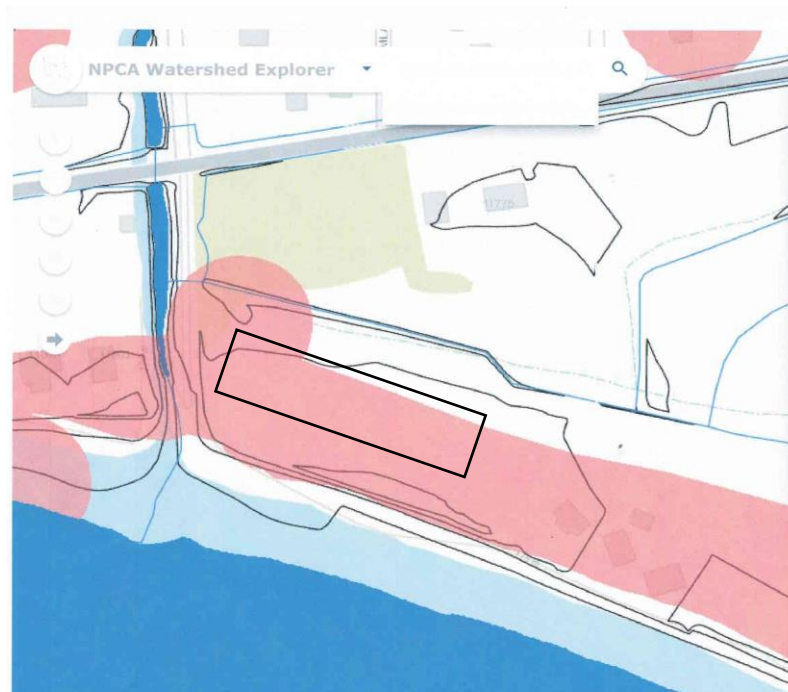
Note the absence of the cement blocks that were washed away.  
Also note the erosion exposing pipes.



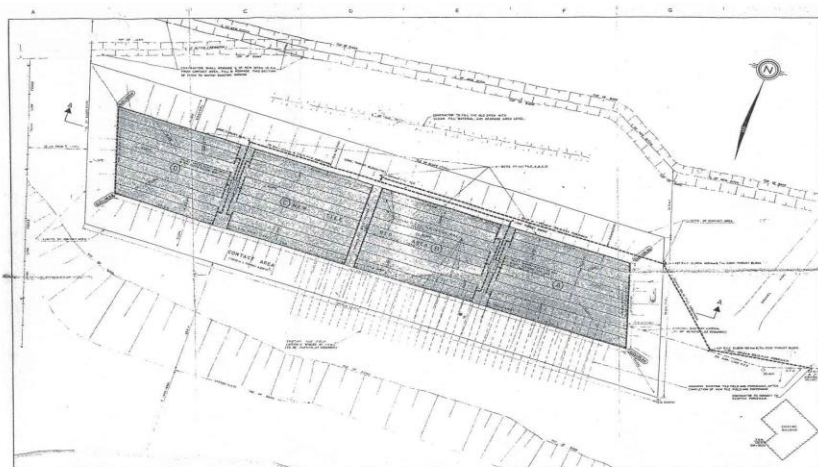
## 8. Groundwater Protection

The Septic Systems and the Casey Drain have been a source of concern since the sale of the property in 2006. It was an issue formally brought forward to the OMB in 2008 and in 2010.

There appear to be four septic systems: the one indicated below in the south west area is the largest and one of most concern. There is a sewer/ man hole (1987) in the middle of the property, another in the center property on the north border and the septic system in the North East portion of the property that was attached to the caretaker's house.



NPCA Watershed Mapping #4 – Ground Water Protection Area (HVA only)



Source – RV Anderson Associates Blue Prints – Septic Sewage Disposal Field May, 1969

NOTE: the septic sits east of the Casey Drain on the west close to the Fowlers Toad Habitat – see black rectangle on Map #4 for approximate location. This field is approximately the size of a football field.

**Why the concern?** – This was formerly a camp for crippled children some of whom took medications for their conditions including for epilepsy. These drugs do not break down and are likely still in the holding tanks.



Sludge leeching onto the beach – November 5, 2018



Sample retrieved December 23, 2019 – showed traces of medication but too degraded by water for a definitive reading.

This has been reported to the Township, the Ministry of the Environment, the Ministry of Natural Resources, the Ministry of Oceans and Fisheries and the NPCA. Concerns persist for the leeching into Lake Erie, the groundwater and the possibility of it affecting or contaminating local well water because nothing has been done to date.



## 9. Fowler's Toad Habitat

The Fowler's Toad Habitat is a defining feature of this low-lying property. It dictates that there can be no 'hard shore protection' or break-wall may be built close to the habitat. This requires the developer to design barriers to the habitat and, as seen in Section 7, the raised beach access stairs.

Permit #: GU-C-007-13



### APPENDIX B – MAP OF THE SITE



A requirement from the OMB Hearing of 2010 regarding the Habitat quoted the MNR (now the MNRF) *"It is our opinion that if the development were to proceed, a contravention of Section 9 [of the Endangered Species Act (ESA)] would occur. Therefore, for the development to comply with the ESA, the developer should seek a permit under Section 17 (2) (c) known as the Overall Benefit Permit, prior to any alteration of the site."* This led to the removal of over 250 trees in 2017: trees which help to impede erosion and reduce the effects of flooding. (Appendix D)



Another stipulation to protect the Fowler's Toad Habitat is to properly maintain the land and to be fenced off to protect it from erosion and human activity.

Fencing was installed. However approximately 2/3 of it was washed away in the storm of October 31, 2019. The only areas that remain are behind piled rocks and cement boulders which have effectively acted as a break-wall.



## 10. Casey Drain

The Casey Drain is maintained by the Township of Wainfleet and borders the west side of the Lakewood Beach property. It is also designated as part of the Fowler's Toad Habitat and a fish spawning protected habitat.

This is an excerpt from the March 11, 2010 OMB Findings:

*"The flooding along the Lakeshore Rd. was a significant part of the first hearing before the [Ontario Municipal] Board. This flooding is caused by the Casey Drain that borders the proposed development on the west. Amec prepared the "Regulatory Floodplain Mapping" [...] dated December 2008 and updated September 2009 [...] The Township is willing to consider further improvements on its property to further reduce the risk of flooding. The NPCA has approved the mitigation plans in principle subject to detailed drawings and permits.*

*The matter of the Casey Drain has been thoroughly studied including the matter of ice dams that was raised by Mr. and Mrs. Bott at the first [OMB] hearing and the Board finds that this matter has been adequately addressed." (Appendix D)*

Whatever was done to mitigate the problem of flooding in the Casey Drain was not working in 2018 well before the 2019/2020 storms. (See Cover Photograph)

## 11. The Storm October 31, 2019





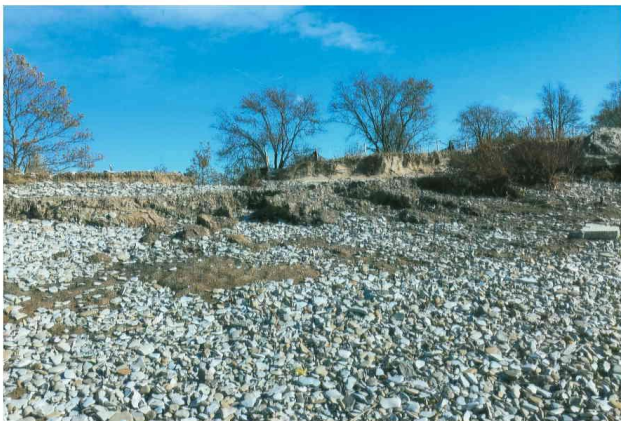
As previously mentioned, the storm that hit the Lake Erie shore line on the night of October 31, 2019 had waves recorded at 16.5 feet high. The water level was already at 175 metres (above sea level) so the waves topped most break-walls by 8 to 14 feet or more and inundated the land behind pulling away decks, sheds, patio furniture, trees and plants, dunes and large cement blocks and rocks, stairs and boats: what ever was in the way. It flooded many basements particularly in the area of the Lakewood Beach Property. Some families had to evacuate. The NPCA mapping of the floodplain for a hundred year event was met or surpassed.



1. Fowler's Toad Habitat pushed farther in



2. Erosion of Dune with old Habitat in front



3. Beach covered in stone – changes daily



4. What is left of the fencing for Fowler's



5. Holding tank? Pump? Well? Exposed.



6. The new slope is about 7 feet high.

The water's edge in the first photo is at approximately 175 m which would have been at the foot of the beach access stairs. The force of the waves carved a wide swath all down the beach removing large cement blocks that had been in place as a retaining wall and exposing old pipes and building foundations.



The Casey Drain and the road access pictured on the left became a wide river of water that flowed across Lakeshore Road flooding out the neighbours to the north.

The winds blew what was left of the White Pine grove of trees in the north west corner over onto the garage of 11775 Lakeshore Rd and had to be removed leaving only about 10% of the original pine grove. This exposes the adjacent neighbour to the high winds and flooding along the west side of the property. Already listed in the floodplain according to the NPCA mapping, these neighbours are now at even higher risk.

The Township has documented the damage sustained in this area.

For some comparison photographs see Appendix E

## 12. How Close is Too Close?

The Auditor General's Report – September 2018 prepared the following information regarding development that is proposed to be built in the proximity of natural hazards. (See Appendix F)

### **A. Provincial Policy Statement (Section 3.1) for Municipal Planning and Policy development from the Provincial Planning Act** (Emphasis added)

1. Development shall **be directed away from areas of natural hazards where there is an unacceptable risk to public health or safety or of property damage**, and not create new or aggravate existing hazards
2. Development shall generally **be directed to areas outside of lands near the Great Lakes shorelines affected by flooding, erosion and unstable beach hazards**; lands near rivers, streams and inland lakes that are impacted by flooding or erosion hazards
3. Development and site alteration **are not permitted within**: portions of the flooding hazard along connecting channels such as the St. Mary's, St. Clair, Detroit, Niagara and St. Lawrence rivers, **unstable beaches, a floodway or floodplain**



HOWEVER:

4. Development and site alteration may be permitted **if the effects and risk to public safety are minor** and could be mitigated in line with provincial standards.

## **B. Conservation Authorities Act and Regulations (Section 28) for Work Permits**

No person shall undertake development in or on areas:

- **near Great Lakes shorelines**
- **15 metres from the stable top of the bank of a river or stream valleys**
- **flood- and erosion-prone lands, wetlands**
- **other areas where development could interfere with wetlands' ability to store water and mitigate floods, including up to 120 metres of Provincially Significant Wetlands and wetlands two hectares in size or larger.**

AGAIN, HOWEVER: Conservation authorities may grant permission for development in or on the above areas **if, in its opinion, the control of flooding, erosion, unstable beaches, pollution or conservation of land will not be affected by the development.**

[NOTE: The land purchased by the NPCA in 2014 is for 15.04 acres or 6.086 hectares.]

## **C. (a) NPCA-Developed Policies 2007 Board-Approved policies:**

**New development is prohibited:**

- **within the furthest distance from shores that people and property can be affected by flooding, erosion and unstable beaches**
- **within 15 metres of the stable top of the bank of a river or stream**
- **on a floodplain** (as determined by a floodplain map)
- **within 120 metres of a Provincially Significant Wetland and wetlands two hectares in size or larger**
- **within 30 metres of wetlands less than two hectares in size**

HOWEVER: **Development may be permitted** within any wetland when the development is only **a replacement of an existing structure** with the same dimensions and square footage as the original. When exceptions are made, **the NPCA may require technical studies to ensure that the risk from natural hazards is not aggravated.**

### **C. (b) 2013 Interim Directives issued by NPCA senior management:**

**Certain new developments may be permitted:**

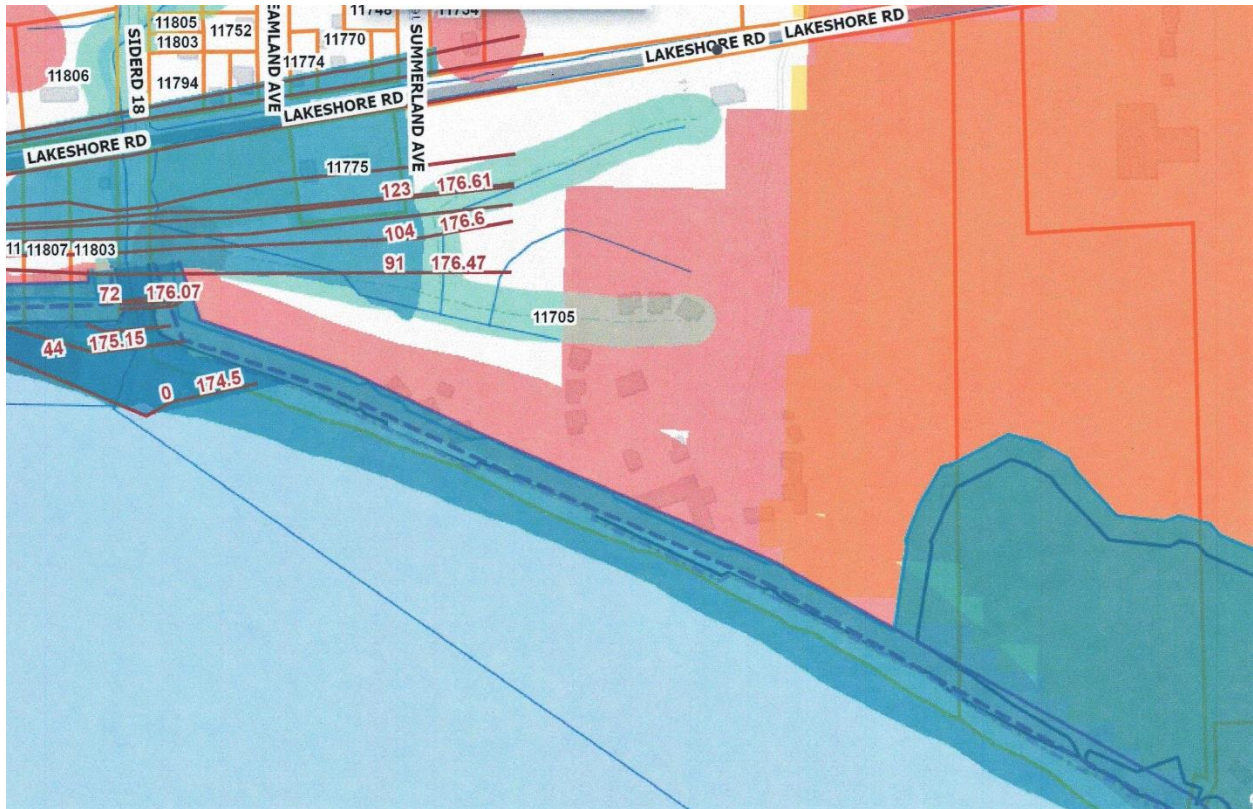
- **within 30 metres of a wetland** where an environmental impact study demonstrates there will be **no net negative impact** on the wetlands' ecological features and ability to absorb water and mitigate floods;
- within river and stream banks where slopes are stable and developments are minor (e.g., storage sheds, stairs, decks, parking and septic systems)

**This raises several questions regarding the approvals and recommendations regarding the Lakewood Beach Properties and the proposed design.**



- If this low-lying property is so prone to flooding and is surrounded on three sides by natural water hazards, how can housing be built within a floodplain, adjacent to a submerged marsh and next to a known flood prone river/drain? What happened to the 'area of influence' from a wetland of 120 metres?
- Why are the mitigation recommendations so meager (raising the slope by only 1 foot – which now washed away)?
- Can this project be salvaged given the current high water levels and storm events?

## 13. Putting it all together ...



### NPCA Watershed Mapping #5

- Pale Blue – NPCA Approximate Regulatory Land (includes the Casey Drain) -see map #1
- Mid Blue – Watercourse 2k – 2002 - see map #3
- Dark Blue – Regulatory Flood Plain - see map #3
- Mid Blue – Regulatory Shoreline Extent - see map #3
- Solid Purple Line – Regulatory Erosion Hazard Limit - (along the edge of the dark blue) see map #2
- Solid Yellow Line - Regulatory Dynamic Beach (difficult to see but follows the slope line) - see map #2
- Blue Dash Line – Stable Slope Allowance (Matches the Beach line) - see map #2
- Pink – Groundwater Quality (HVA) - see map #4
- Orange – Groundwater Quantity (SGRA) - added
- Cross Section Inventory - the lines with the height above sea level marked. - added

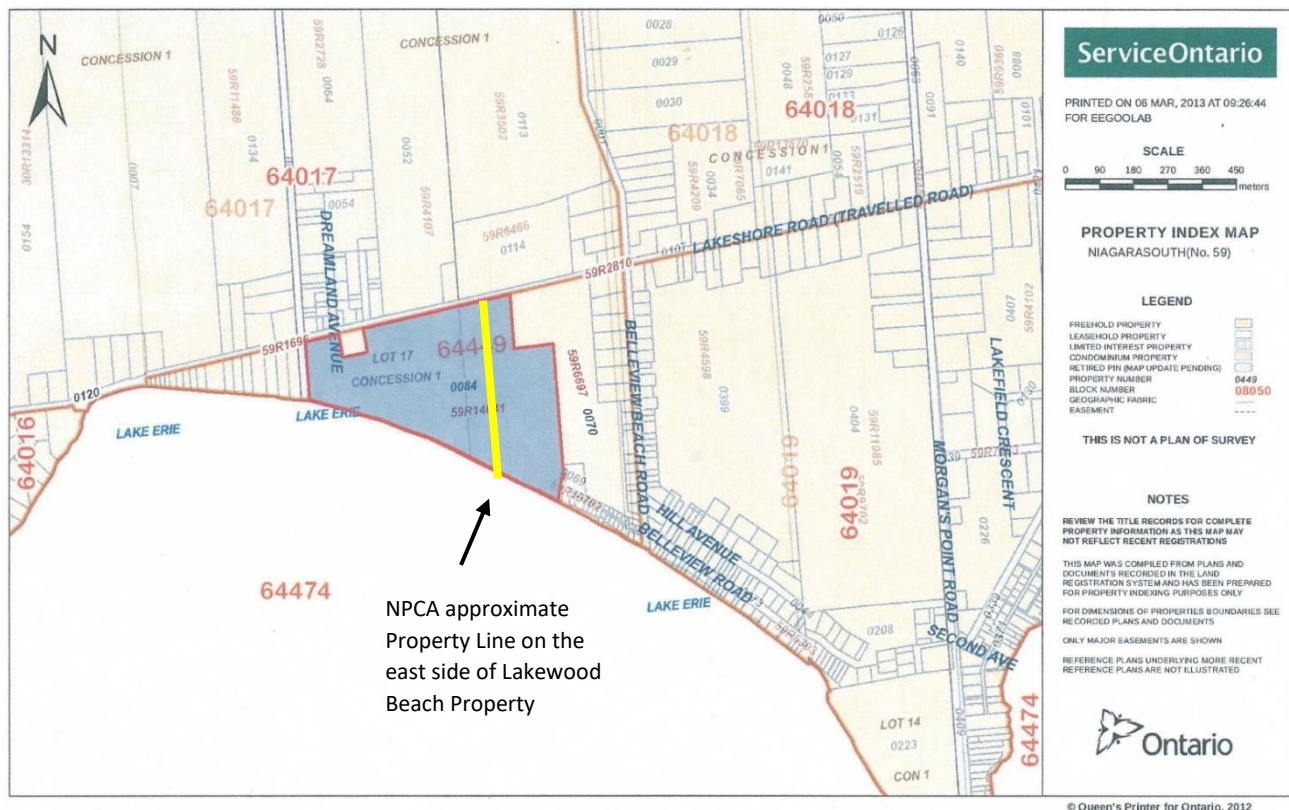
Given that this map was made before the current high water level situation and given that the Auditor General pointed out that all the Watershed Mapping needs to be updated, what does this map tell us?

- It confirms that Lakewood Beach is a low-lying property – at its highest point which is in the north (176.61m) approximate 2 m above the AVERAGE 2019 water level of 174.59 m, and in the south the shoreline has moved northward because of the erosion and is now under water;
- It confirms that the property is exposed on the south to vagaries of Lake Erie;



- It confirms that a 100 year event has occurred with the Erosion Hazard Limit being fairly accurate so that the Erosion Limit now appears to be the new slope line. This implies that the Fowler's Toad Habitat will have moved inshore which affects the permitted building limit;
- It confirms that a portion of the property on the west is in a flood plain and some of the proposed units sites are in that zone;
- It confirms that the NPCA land to the East is a wetland in need of conservation, which implies that several of the proposed unit sites on the west of the NPCA property (greater than 2.2 hectares) are within the 120m 'area of influence' limit.

## 14. The purchase of 6.086 hectares by the NPCA in 2014



Parcel of land #64449 in 2012 prior to sale of the east side of the property to NPCA

Source: Phase 1 Enhanced Environmental Site Assessment – April 2013

The purchase of land by the NPCA from the Lakewood Beach Properties was questioned in the **Auditor General's Special Audit** September 2018 (Appendix G)

The following is a summary statement from that audit which specifically identifies a problem with the sale of a portion of the property to the NPCA in 2014 but does not go into further detail.

In March 2014, the NPCA purchased a 15.04-acre parcel of land in Wainfleet from Lakewood Beach Properties Ltd. at a total cost of \$1.98 million. At the time, the parcel of land had an appraised value between \$2.6 million and \$2.8 million.

The entire parcel of land was an approximately 54-acre site purchased by Lakewood Beach Properties Ltd. in October 2006 for \$3.1 million.

And from Section 6.5

However, we found that the NPCA did not follow its land acquisition strategy between 2008 and 2017. It spent a total of \$3 million on 10 parcels of land totaling 109 hectares. A 2014 purchase, representing 66% of this amount (\$1.98 million) was of a 6.1-hectare Lakewood Beach property in Wainfleet that the 2007 strategy designated as low priority (scoring three out of a possible 15).

HOWEVER - The Land Registry Office record does not match the figures quoted by the Auditor General. (See Appendix H)

The Property was bought by Lakewood Beach Properties Ltd. On October 12, 2006 for \$3.125 M. Then the property was split in 2014 and the more ecologically sensitive portion was sold on March 19, 2014 to Niagara Peninsula Conservation Authority for \$2.2M for 15.04 acres. This implies that the developer really invested only \$ 925,000.00 to purchase the land.

## 12. Summary of Concerns

Unfortunately, Lake Erie has proven the community's concerns to be well founded: the hundred year event appears to have taken place. A new parameter has been set.

- When this property was sold in 2006 there were many questions as to why it was sold to a developer as the Official Plan at that time had a zoning of O1 – or Open Space with a permit for Recreational uses and accessory buildings only. Any Residential use was restricted to recreational, maintenance and security staff requirements only. (Zoning By-laws December 2010);

- The Township of Wainfleet is a rural community with no other projects of this magnitude and none under the Condominium Act;
- The cancellation of the water and wastewater supply from Port Colborne required another amendment to allow a Communal System also not permitted in the Official Plan until a site specific amendment was approved;
- The development of this property does not conform to Provincial Policy in particular the Places to Grow 2006 & 2014 and the Provincial Policy Act. ;
- The dynamic beach hazard zone is now much larger, putting many of the proposed units into the flood plain and the erosion hazard zones.
- The over-riding concern has always been that this property is too low-lying to safely build homes so exposed to flooding and erosion and so close to the shoreline.
- The NPCA watershed mapping, while helpful, does not reflect the high water levels of the past two years.
- The concerns recently raised by the Ombudsman confirms our concerns for due process in the decision making for this project.

## 13. Our Request... Our 'ASK'

In studying the various reports and documents, we have seen a consistency in the final decisions made allowing the developer to move ahead with few recommendations to protect the potential owners from the ferocity of Lake Erie. The Fowler's Toad Habitat has been a limiting factor, not allowing a break-wall to be built.

In light of the current situation on Lake Erie's shores a re-positioning of the units farther back on the property at a higher elevation may then allow some protection to be built.

The experts need to weigh in and be prepared to defend their positions to the community and our councilors.

**WE ASK** that every professional including the coastal engineers, stormwater and waste water management professionals and endangered species experts, in fact anyone who has made a recommendation or given approval for this project and every agency, whether provincial, regional or municipal, be required to visit the site and re-evaluate their decisions and amend their recommendations.

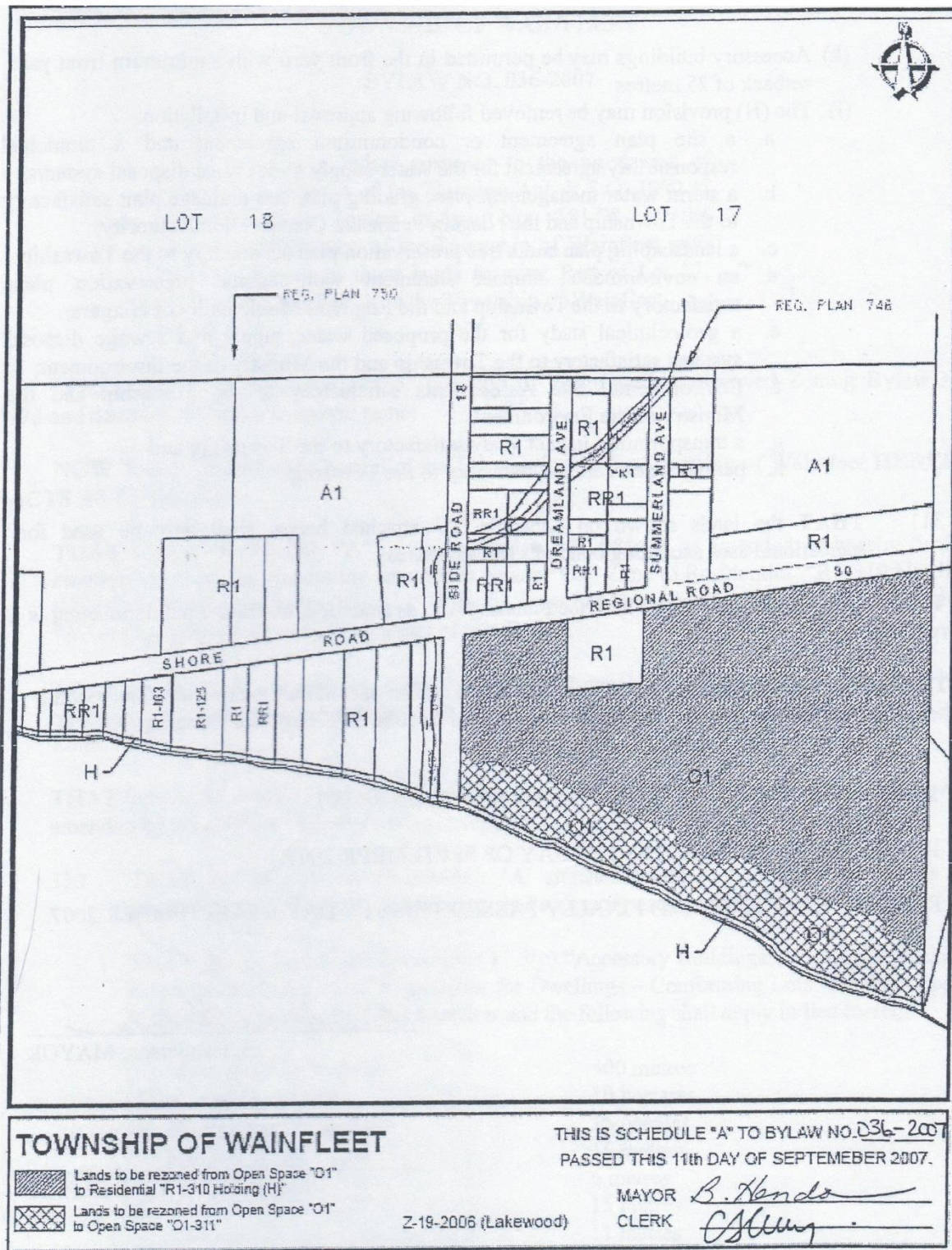


Specifically ...

- **WE ASK** that positioning of the homes so close to the shoreline be addressed. **This is a potential property damage issue.**
- **WE ASK** the Fowler's Toad Habitat be re-defined. **This is an environmental protection issue.**
- **WE ASK** that the configuration of the Casey Drain be re-engineered. It is a flooding issue for the neighbours as well as for Lakewood. **This is a health and safety issue.**
- **WE ASK** that the contents of the Septic holding tanks be tested for non-biodegradable medications before the full removal of the systems under the Environmental Protection Act and Ontario Cleanup Guidelines. **This is a groundwater protection issue.**
- **WE ASK** that the NPCA reverse the policy passed in 2013 that reduced their area of influence from a significant wetland from 120 m to 30 m. **This is a regulatory issue.**
- **WE ASK** that the NPCA add their purchased Lakeshore property to their Restoration Projects 2020 list. **This is a conservation issue.**
- **WE ASK** the NPCA assist this process by updating the Watershed mapping along the Lake Erie Coastline as soon as possible. **This is an administrative and mandate issue.**
- Given all we have learned, given the higher water levels, and given what the Auditor General has revealed, **WE ASK** that the whole approval process be reviewed, from initial approval to build under the Condominium Act, to the sale of property to NPCA in 2014, and to each amendment made to accommodate this project. **This is an integrity issue.**

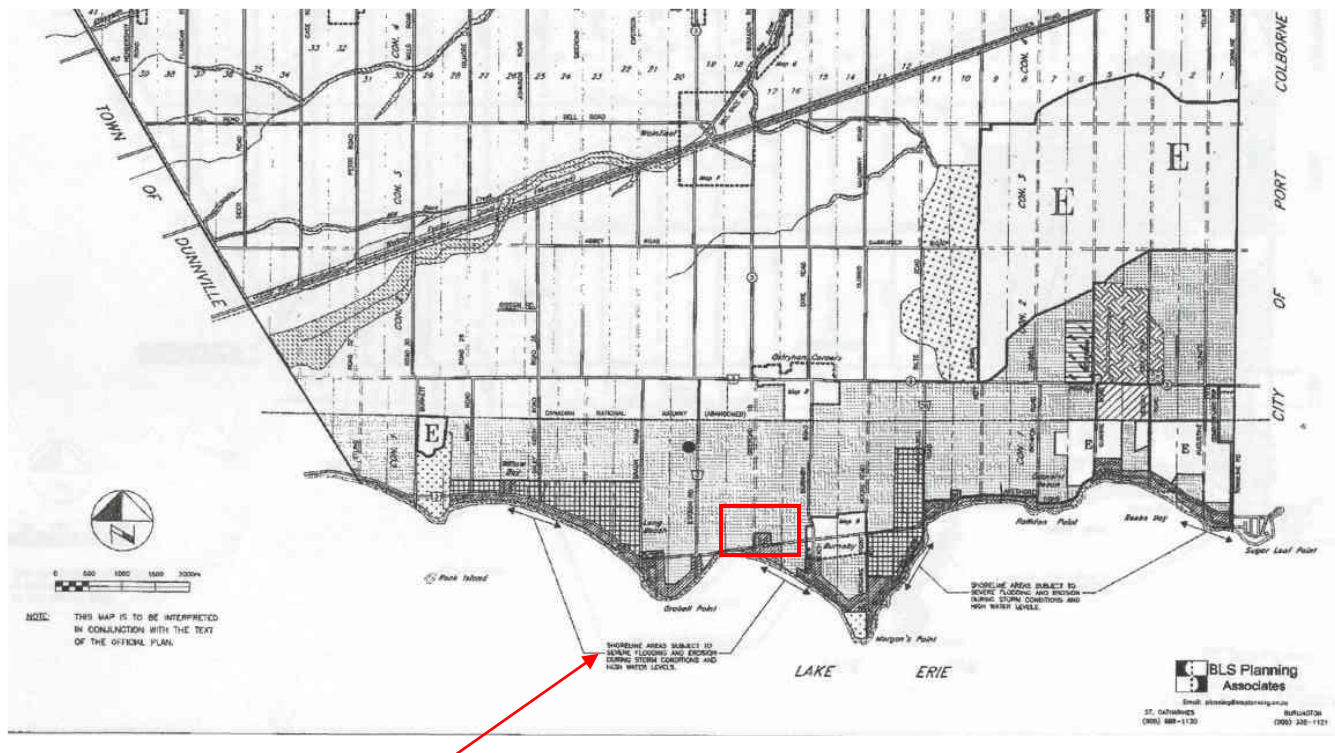
# Lake Erie vs Lakewood Beach Property Appendices

APPENDIX A





Map found in the 2000 Official Plan for The Township of Wainfleet  
(Office Consolidation Version)

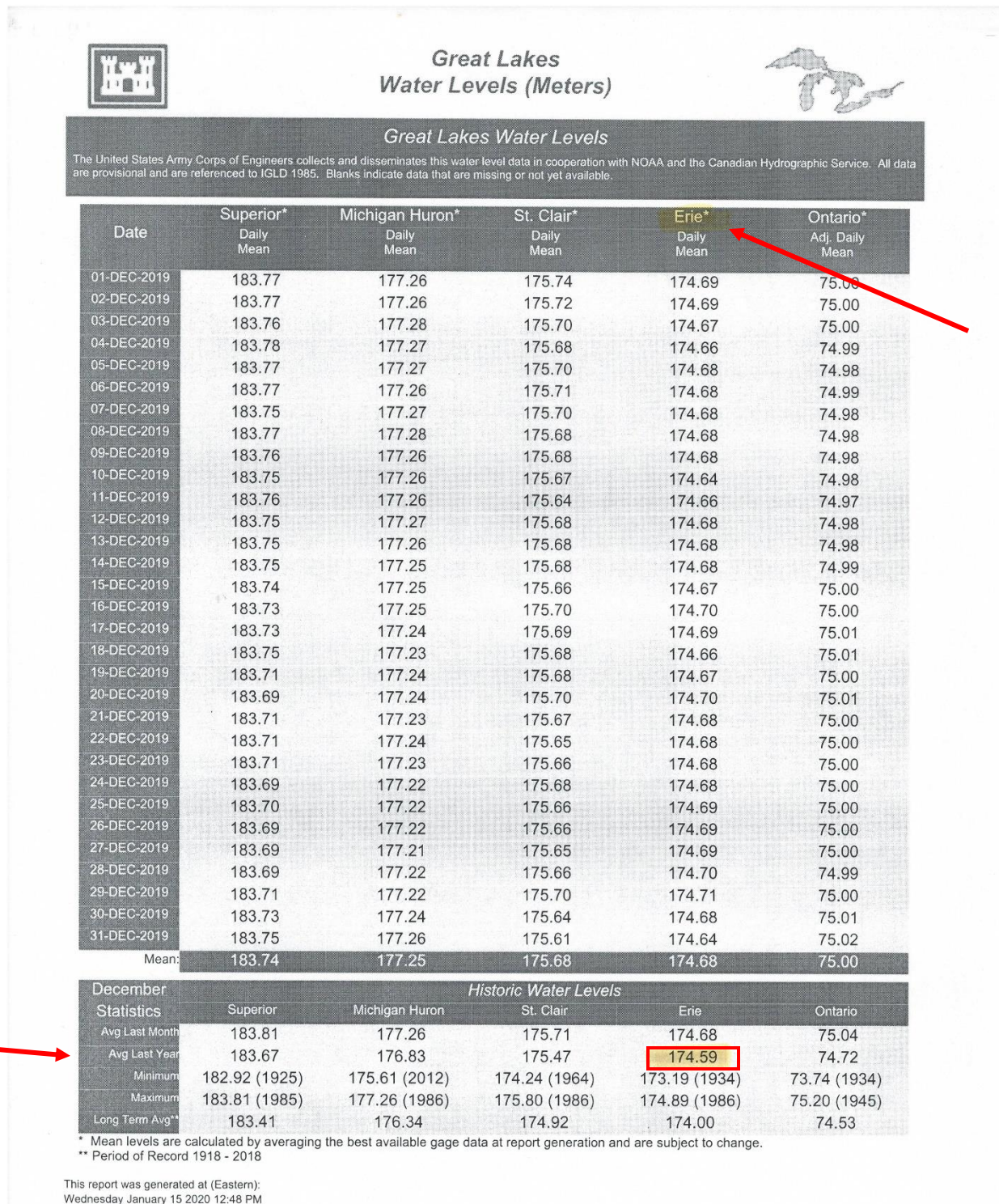


“Shoreline areas subject to severe flooding and erosion during storm conditions and high water levels.” Map dated June 2000.

In 2000 the zoning designation was changed to Lakeshore Residential to accommodate the Caretaker of the Easter Seals Camp who had taken a winter job to supplement his income, which did not conform to the Open Space Designation. The Lakeshore Residential designation was for his portion of the property only.

This was reversed by Council on September 11, 2007 (see previous map) and the whole property was back to being an O1 designation, or Open Space until the ‘site specific’ amendment was passed in 2014.

## Appendix B



The average height for all of Lake Erie in 2019 was 174.59 m.





## Great Lakes Water Levels (Meters)



### Lake Erie Water Levels

The United States Army Corps of Engineers collects and disseminates this water level data in cooperation with NOAA and the Canadian Hydrographic Service. All data are provisional and are referenced to IGLD 1985. Blanks indicate data that are missing or not yet available.

Date	Toledo	Cleveland	Port Stanley	Port Colborne	Erie Lake Mean
01-DEC-2019	174.848	174.718	174.693	174.512	174.69
02-DEC-2019	174.688	174.730	174.695	174.630	174.69
03-DEC-2019	174.569	174.643	174.715	174.755	174.67
04-DEC-2019	174.465	174.656	174.700	174.833	174.66
05-DEC-2019	174.604	174.669	174.682	174.771	174.68
06-DEC-2019	174.651	174.680	174.677	174.693	174.68
07-DEC-2019	174.712	174.668	174.689	174.660	174.68
08-DEC-2019	174.656	174.620	174.726	174.701	174.68
09-DEC-2019	174.671	174.642	174.719	174.691	174.68
10-DEC-2019	174.384	174.659	174.717	174.825	174.64
11-DEC-2019	174.342	174.600	174.724	174.961	174.66
12-DEC-2019	174.722	174.633	174.714	174.664	174.68
13-DEC-2019	174.705	174.644	174.723	174.663	174.68
14-DEC-2019	174.645	174.680	174.681	174.718	174.68
15-DEC-2019	174.491	174.666	174.712	174.818	174.67
16-DEC-2019	174.782	174.705	174.698	174.643	174.70
17-DEC-2019	174.668	174.718	174.690	174.667	174.69
18-DEC-2019	174.422	174.686	174.663	174.870	174.66
19-DEC-2019	174.633	174.659	174.701	174.695	174.67
20-DEC-2019	174.806	174.707	174.695	174.576	174.70
21-DEC-2019	174.682	174.660	174.713	174.681	174.68
22-DEC-2019	174.644	174.636	174.710	174.725	174.68
23-DEC-2019	174.661	174.648	174.700	174.701	174.68
24-DEC-2019	174.775	174.697	174.682	174.575	174.68
25-DEC-2019	174.725	174.678	174.702	174.653	174.69
26-DEC-2019	174.735	174.686	174.707	174.621	174.69
27-DEC-2019	174.666	174.672	174.707	174.700	174.69
28-DEC-2019	174.747	174.681	174.700	174.662	174.70
29-DEC-2019	174.849	174.731	174.699	174.557	174.71
30-DEC-2019	174.546	174.666	174.766	174.741	174.68
31-DEC-2019	174.164	174.584	174.791	175.012	174.64
Mean:					174.68

This report was generated at (Eastern):  
Wednesday January 15 2020 12:48 PM

The mean for Lake Erie in December was 174.68 m above sea level. In the Port Colborne area (the nearest to the Lakewood Property) the lowest in December was on December 1<sup>st</sup> at 174.512 and the highest was on December 31<sup>st</sup> it was at 175.012 m.





Fisheries and Oceans  
Canada

Pêches et Océans  
Canada



Environment and  
Climate Change Canada

Environnement et  
Changement climatique Canada

# Water Levels Niveaux d'eau

## Great Lakes and Montreal Harbour

Monthly Bulletin prepared by the  
Canadian Hydrographic Service  
Department of Fisheries and Oceans

## Grands Lacs et port de Montréal

Bulletin mensuel préparé par le  
Service hydrographique du Canada  
Ministère des Pêches et des Océans



December 2019 Décembre

### Water Level Advisory

Water levels for Lake Superior, Lake Michigan-Huron, Lake St. Clair, Lake Erie, Lake Ontario, and Montréal Harbour are above their all-time average for this time of year and are above the level of Chart Datum.

**Mariners should exercise extreme caution throughout the entire system, especially during periods of strong winds when water levels can rise or fall significantly in a short period of time.**

### Avis du Niveau d'Eau

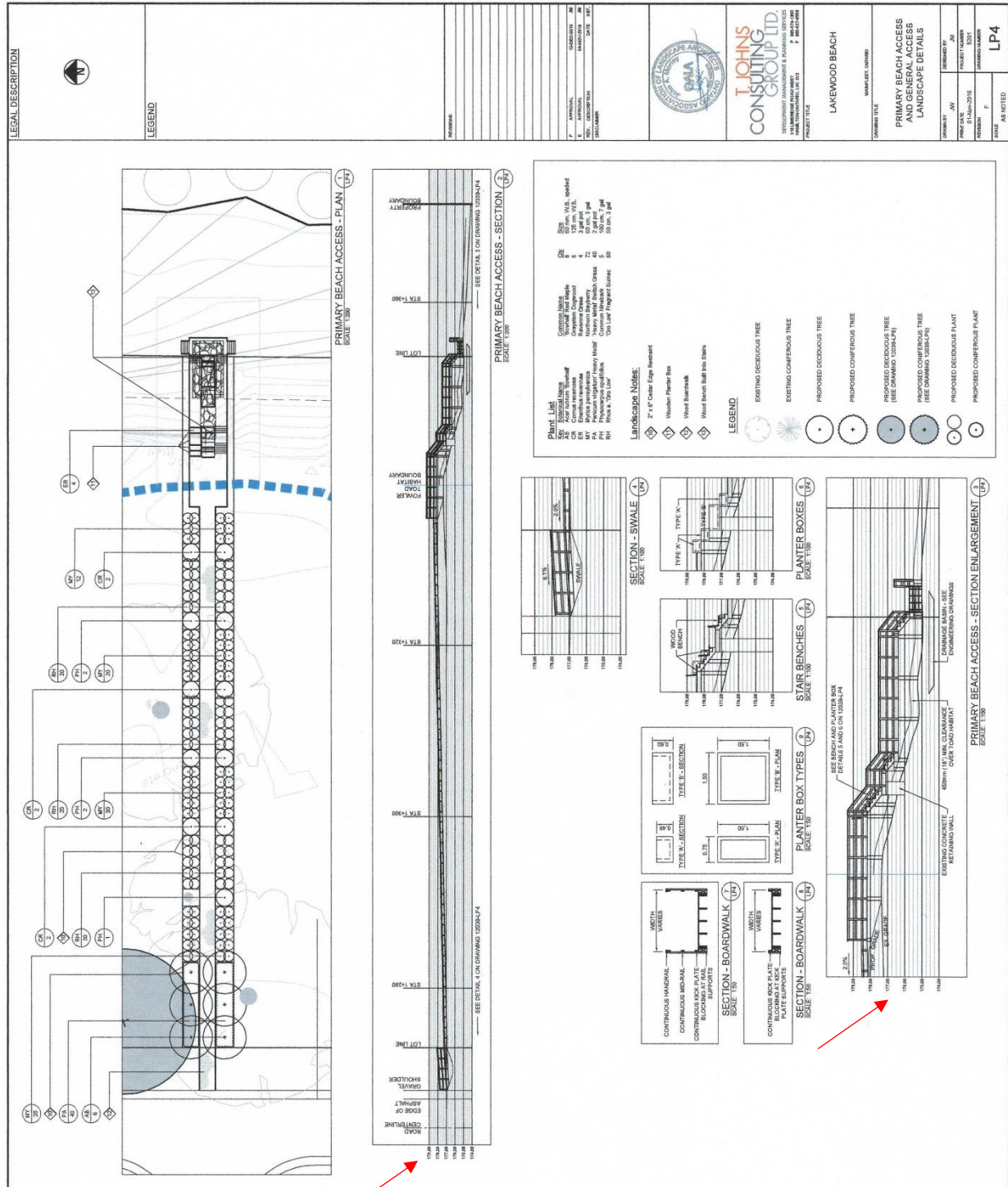
Les niveaux d'eau pour le lac Supérieur, le lac Michigan-Huron, le lac Sainte-Claire, le lac Érié, le lac Ontario et port de Montréal sont tous supérieurs à leur moyenne de tous les temps pour cette période de l'année et sont au-dessus du zéro des cartes.

**Les navigateurs devraient faire preuve de beaucoup de prudence à travers tout le bassin hydrographique, tout particulièrement lorsqu'il vente très fort, car dans de telles situations, le niveau de l'eau peut grandement augmenter ou diminuer en très peu de temps.**

Monthly Mean Water Levels in metres referred to IGLD 1985						
December 2019	Lake Superior	Lake Huron	Lake St. Clair	Lake Erie	Lake Ontario	Montréal
Mean for Month (preliminary data)	183.74	177.25	175.68	174.68	75.00	6.73
Mean for month last year	183.67	176.83	175.47	174.60	74.71	6.78
Mean for month, last 10 years	183.40	176.29	175.02	174.16	74.53	6.29
Statistics for period of record	1918-2018	1918-2018	1918-2018	1918-2018	1918-2018	1918-2018
Maximum monthly mean / year	183.81 1985	177.26 1986	175.80 1986	174.89 1986	75.20 1945	7.24 1972
Mean for month, All Time	183.41	176.34	174.93	174.00	74.53	6.50
Minimum monthly mean / year	182.92 1925	175.61 2012	174.24 1964	173.19 1934	73.74 1934	5.56 2007
Probable mean for next month	183.70	177.24	175.69	174.65	75.03	7.10
Chart Datum	183.2	176.0	174.4	173.5	74.2	5.55

## Appendix C -

## Beach Access Designs to go over the Fowler's Toad Habitat.



Note the Scale in small print: from the bottom 173m to 179m. With the height of the storm waves recorded at 180m above sea level that is 1 m above the top of the designed beach access. Locals have reported that the waves were well above the official 16.5 feet/5m based on what they witnessed and the damage done.





## Appendix D

Three relevant sections from the Ontario Municipal Board Decision  
March 11, 2010 (*Emphasis added*)

### 1. The Fowler's Toad

Mr. Brobbel reviewed the information concerning the Fowler's Toad, an endangered species under the *Endangered Species Act* (2008). He was the principal author of an Environmental Impact Statement (EIS) that was reviewed by the Ministry of Natural Resources (MNR) and Niagara Peninsula Conservation Authority. The Board notes the following in correspondence from the MNR **"It is our opinion that if development were to proceed, a contravention of Section 9 of the Act would occur. Therefore, for development to comply with the ESA, the developer should seek a permit under Section 17(2)(c), known as an Overall Benefit permit, prior to any alteration to the site.** It should be noted there is no guarantee this permit would be granted. The Applicant will need to consider things like education programs, Beach management, habitat enhancement, monitoring, etc. in order to show an overall benefit to the Fowler's Toad for the entire development site... The Ministry of Natural Resources does not object to the approval of the by-law amendment as adopted by the Township of Wainfleet for the first phase of the development on the western 25 acre property." (Exhibit 25, Section 2)

The NPCA notes in a letter to the Applicant dated January 11, 2010. "As discussed, the NPCA defer to the Region of Niagara and the Ministry of Natural Resources (MNR) as the lead agency for Species at Risk who is dealing directly with the developer. We understand that the MNR has approved a habitat enhancement /compensation concept elsewhere on the lands. You will recall that **the NPCA's initial concern was any impact to Fowler's Toad habitat resulting from "hard" shore protection (i.e. a concrete shore wall etc.) Given that no "hard" shore protection**

**is proposed, the NPCA have no issues from a “habitat” perspective.”** (Exhibit 27, Tab 6)

Mr. Miller, Township of Wainfleet’s Planner, indicated that the following provision should be added to the holding provisions of By-law 036-2007: “i. All necessary approvals from the Ministry of Natural Resources including an Overall Benefit Permit pursuant to Section 17(2)(c) of the *Endangered Species Act* (2008).”

The Board heard no substantive evidence to contradict the position that the legislation and the permitting process were adequate to protect the habitat of the Fowler’s Toad. The *Endangered Species Act* (2008) provides a significant improvement over the legislative regime that existed with respect to the Board’s interim decision in 2008.

The Board finds that the issue of the Fowler’s Toad has been adequately addressed.

## **2. The Casey Drain**

The flooding along the Lake Shore Road was a significant part of the first hearing before the Board. **This flooding is caused by the Casey Drain that borders the proposed development on the west. Amec prepared the “Regulatory Floodplain Mapping for the Casey Drain dated December 2008 and updated September 2009** (Exhibit 29). The report was peer reviewed by Brian Bishop, consulting engineer with expertise in floodplain mapping and drainage engineering matters. **The Casey Drain has a drainage area of 674.5 ha that is dominated by extensive development forms –farms, fields, pasture, and forested lands. The area floods in high water conditions at the mouth and along the Lake Shore Road. The hydrologic and hydraulic modelling included an ice jam condition (177.05 m) and predicted an elevation of below the flood proofing elevation of 177.6 m.** The improvements to the Casey Drain and removal of the first two units will lower the existing flood elevation by 6 to 7 cm. The Township is willing to consider further improvements on its property to further reduce the risk of flooding. The NPCA has approved the mitigation plans in principle subject to detailed drawings and permits. (Exhibits 25, 26 and 30)

The matter of the Casey Drain has been thoroughly studied including the matter of ice dams that was raised by Mr. and Mrs. Bott at the first hearing and the Board finds that



this matter has been adequately addressed. The Board notes that with improvements on the Township's property there may be further improvements to the flood elevations.

### **3. The Lake Erie Shoreline**

**Mr. Pinchin, a consulting engineer retained by the Applicant, indicated that the buildings proposed on the site would be flood proofed to an elevation of 177.6 m. The wave uprush elevation is 178.5 m and overtopping would occur.** The one hundred year storm elevation is 176.77 m and instantaneous high is 176.56 m. Mr. Pinchin indicated that the combination of additional fill and setback will provide adequate protection for flooding and ice jamming.

Ms. Bott questioned Mr. Pinchin's assumptions given the damage to the former Easter Seals Camp that occurred in 1985 when six cabins were destroyed. Ms. Bott also pointed to the ice damage that occurred in December of 2008. Ms. Konc stated that

Lake Erie was extremely unpredictable and that shoreline properties had been severely impacted in the past.

**The Board finds that the flood proofing elevation and the placement of fill has been accepted by the NPCA** and represents a reasonable approach to shoreline protection and flood proofing.

The parameters have changed since 2010. These findings now need to be questioned by the MNRF and the NPCA.

Appendix E



2006 time of purchase



2019 after the storm – note blocks are gone



2006 time of purchase



2019 post storm – note erosion and water level



2015 – Brush removed in 2017



2019 – Post storm erosion and water level



## Appendix F

### Appendix 15: Main Policies Used by Conservation Authorities to Review Municipal Land-Use Planning Policies, Development Proposals and Work Permit Applications

Prepared by the Office of the Auditor General of Ontario

#### For Municipal Planning Policies and Development Proposals

#### For Work Permit Applications

##### **Planning Act**

Establishes the rules for land-use planning in Ontario.

##### **Provincial Policy Statement (Section 3.1)**

[Issued under the *Planning Act* to provide direction on land-use planning and development matters of provincial interest]

Development shall be directed away from areas of natural hazards where there is an unacceptable risk to public health or safety or of property damage, and not create new or aggravate existing hazards.

Development shall generally be directed to areas outside of:

- lands near the Great Lakes shorelines affected by flooding, erosion and unstable beach hazards
- lands near rivers, streams and inland lakes that are impacted by flooding or erosion hazards

Development and site alteration are not permitted within:

- portions of the flooding hazard along connecting channels such as the St. Mary's, St. Clair, Detroit, Niagara and St. Lawrence rivers
- unstable beaches
- a floodway or floodplain

Development and site alteration may be permitted if the effects and risk to public safety are minor and could be mitigated in line with provincial standards.

##### **Conservation Authorities Act and regulations made under Section 28**

No person shall undertake development in or on areas:

- near Great Lakes shorelines
- 15 metres from the stable top of the bank of a river or stream valleys
- flood- and erosion-prone lands
- wetlands
- other areas where development could interfere with wetlands' ability to store water and mitigate floods, including up to 120 metres of Provincially Significant Wetlands and wetlands two hectares in size or larger

Conservation authorities may grant permission for development in or on the above areas if, in its opinion, the control of flooding, erosion, unstable beaches, pollution or conservation of land will not be affected by the development.

##### **NPCA-Developed Policies**

##### **2007 Board-Approved policies:**

New development is prohibited:

- within the furthest distance from shores that people and property can be affected by flooding, erosion and unstable beaches
- within 15 metres of the stable top of the bank of a river or stream
- on a floodplain (as determined by a floodplain map)
- within 120 metres of a Provincially Significant Wetland and wetlands two hectares in size or larger
- within 30 metres of wetlands less than two hectares in size

Development may be permitted within any wetland when the development is only a replacement of an existing structure with the same dimensions and square footage as the original. When exceptions are made, the NPCA may require technical studies to ensure that the risk from natural hazards is not aggravated.

##### **2013 Interim Directives issued by NPCA senior management:**

Certain new developments may be permitted:

- within 30 metres of a wetland where an environmental impact study demonstrates there will be no net negative impact on the wetlands' ecological features and ability to absorb water and mitigate floods
- within river and stream banks where slopes are stable and developments are minor (e.g., storage sheds, stairs, decks, parking and septic systems)



## Auditor General's Special Audit September 2018

Bonnie Lysyk, Auditor General – an excerpt regarding the NPCA purchase of land from Lakewood Beaches Properties 2014

### 6.5 Buying Land for Conservation, Recreation and Education

The *Conservation Authorities Act* empowers the NPCA to acquire land to accomplish its objectives. The NPCA currently owns and manages 2,938 hectares of land within the watershed, which represents about 1% of the entire watershed.

In 2007, the NPCA developed a land acquisition strategy that identified over 800 parcels of land, covering 7,400 hectares across 15 municipalities, for protection. The strategy called for the highest-priority lands to be acquired in the next five years (i.e., by 2012) and recommended that the NPCA set aside \$500,000 annually to fund these acquisitions.

#### 6.5.1 NPCA's 2007 Land Acquisition Strategy to Acquire Ecologically Sensitive Lands Not Followed

The 2007 strategy was based on scientific data and objective analysis. The NPCA identified sensitive natural areas that were at risk of being lost and then prioritized the lands based on their proximity to future development, type of habitat and potential to connect important natural areas.

However, we found that the NPCA did not follow its land acquisition strategy between 2008 and 2017. It spent a total of \$3 million on 10 parcels of land totaling 109 hectares. **A 2014 purchase, representing 66% of this amount (\$1.98 million) was of a 6.1-hectare Lakewood Beach property in Wainfleet** that the 2007 strategy designated as low priority (scoring three out of a possible 15). In its report to the Board requesting approval for the purchase, the NPCA identified that the Town of Wainfleet supported the acquisition in order to provide the public access to waterfront areas. The Board report also indicated that the acquisition met the proposed new land acquisition criteria [...], but did not describe how.

Only 5% of the \$3 million (\$146,000) was spent on land that was identified as a high priority in 2007—a 9.85-hectare piece of land with high ecological value.

## Appendix H

### Property History

#### Parent Properties for the Subject Property (644490085)

Year	Event Type	Parent Properties	Status
2014	Split	644490084	Inactive

#### Sales History - Valuation & Sales

Sale Date	Sale Amount	Type	Party To	Notes
March 19, 2014	\$2,200,000	Transfer	NIAGARA PENINSULA CONSERVATION AUTHORITY;	
March 19, 2014	\$2,200,000	Transfer	NIAGARA PENINSULA CONSERVATION AUTHORITY;	The following PINs were transferred together with the Subject Property : 644490085
Oct 12, 2006	\$3,125,000	Transfer	LAKESWOOD BEACH PROPERTIES LTD.;	



Ontario ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER  
LAND  
REGISTRY  
OFFICE #59  
64449-0084 (LT)  
\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PAGE 2 OF 2  
PREPARED FOR GERRY S  
ON 2017/10/12 AT 15:59:55

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
REMARKS: SN139600.						
SN383118	2013/08/15	DISCH OF CHARGE		*** COMPLETELY DELETED *** FIRSTONTARIO CREDIT UNION LIMITED		
REMARKS: SN139601.						
59R15051	2014/03/03	PLAN REFERENCE				C
SN399598	2014/03/19	TRANSFER	\$2,200,000	LAKWOOD BEACH PROPERTIES LTD.	NIAGARA PENINSULA CONSERVATION AUTHORITY	C
REMARKS: PLANNING ACT STATEMENTS.						
SN399601	2014/03/19	CHARGE	\$987,500	NIAGARA PENINSULA CONSERVATION AUTHORITY	LAKWOOD BEACH PROPERTIES LTD.	C
SN399603	2014/03/19	DISCH OF CHARGE		PENFINANCIAL CREDIT UNION LIMITED		C
REMARKS: SN374894.						

SN 399598 2014/03/19 **Transfer** \$2,200.000 *Parties from* Lakewood Beach Properties LTD  
*Parties to* Niagara Peninsula Conservation Authority.

SN399601 2014/03/19 **Charge** \$987,500 *Parties from* Niagara Peninsula Conservation  
Authority *Parties to* Lakewood Beach Properties LTD

SN 399603 2014/03/19 **Disch of Charge** *Parties from* Penfinancial Credit Union Limited

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

What these two searches tell us is the NPCA paid \$2.2M not \$1.98M as stated in the Audit Report.

This is confirmed by the following documents received from a Freedom of Information Request: Agreement to Purchase (first page only) including Schedule A and Land Transfer (First and last pages only).





**AGREEMENT OF PURCHASE AND SALE  
(FOR USE IN THE PROVINCE OF ONTARIO)**



**BUYER**, ..Niagara Peninsula Conservation Authority .....  
....., agrees to purchase from .....  
(Full legal names of all Buyers)

**SELLER**, .... Lakewood Beach Properties Ltd. ....  
....., the following .....  
(Full legal names of all Sellers)

**REAL PROPERTY:**

Address .. Lakeshore Rd. ... fronting on the .. south .side of .. Lakeshore Rd in the .. Township of  
Wainfleet ..... and having a frontage of .. 136.30 metres ... more or less by a depth of  
... 390 metres ... more or less and legally described as \*

..... Part of Pin 64449-0021, being Part 2 Plan 59R-146-11, ..... (the "property").  
(Legal description of land including easements not described elsewhere)

\*See Schedule B for property description.

**PURCHASE PRICE:** ..Two Million Two Hundred Thousand Dollars. Dollars (CDN\$2,200,000.. )

**DEPOSIT:**

Buyer submits (, Upon Acceptance) .One Hundred and Fifty Thousand .Dollars (CDN\$150,000.. )  
(Herein Upon acceptance)

by negotiable cheque payable to . Vendor's Solicitor. . to be held in trust without interest pending completion  
or other termination of this Agreement and to be credited toward the Purchase Price on completion. Buyer  
agrees to pay the balance as more particularly set out in Schedule A attached.

**SCHEDULE A and Schedule B** .....hereto form(s) part of this Agreement.

1. **CHATTELS INCLUDED:** ... None. ....

2. **FIXTURES EXCLUDED:** ... None. ....

3. **RENTAL ITEMS:** The following equipment is rented and not included in the Purchase Price. The Buyer  
agrees to assume the rental contract(s), if assumable:  
..... None .....

4. **IRREVOCABILITY:** This Offer shall be irrevocable by ..Buyer .. until .. p.m. on the .. 28th. .day  
of ..February .. 2014 .., after which time, if not accepted, this Offer shall be null and void and the deposit  
shall be returned to the Buyer in full without interest.  
(Seller/Buyer)

5. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the .. 17th. .day  
of ..March .., 2014. \*. \* Upon completion, vacant possession of the property shall be given to the Buyer  
unless otherwise provided for in this Agreement.  
\*\* See Schedule B for completion date details.

6. **NOTICES:** Seller hereby appoints their solicitor as Agent for the purpose of giving and receiving notices  
pursuant to this Agreement. The Buyer hereby appoints their solicitor as Agent for the purpose of giving  
and receiving notices pursuant to this Agreement. Any notice relating hereto or provided for herein shall  
be in writing. This offer, any counter offer, notice of acceptance thereof, or any notice shall be deemed  
given and received, when hand delivered to the address for service provided in the Acknowledgement  
below, or where a facsimile number is provided herein, when transmitted electronically to that facsimile  
number.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

OREA Standard Form: Do not alter when printing or reproducing the standard pre-set portion. Form 100 01/2005 Page 1 of 7

This document may explain the discrepancies between the Sale price of the property bought by NPCA and the cost of the property quoted by the Auditor General: \$2.2M less the donations mentioned below is \$1.975M. This also confirms that the NPCA gave Lakewood Beach Properties a mortgage of \$987,500.00

Schedule A



**AGREEMENT OF PURCHASE AND SALE**  
(FOR USE IN THE PROVINCE OF ONTARIO)



**BUYER,** . . . Niagara Peninsula Conservation Authority

**SELLER,** . . . Lakewood Beach Properties Ltd.

**REAL PROPERTY:** Lakeshore Rd Wainfleet Part 2 59R14641

---

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, by bank draft or certified cheque, to the Seller on the completion of this transaction.

The Seller shall donate to the Buyer the sum of \$112,500 to be paid from the Purchase Price on closing.

The Buyer shall give a Mortgage back to the Seller on closing in the amount of \$987,500 payable without interest on the 1<sup>st</sup> anniversary of the closing date. The Seller shall donate to the Buyer the sum of \$112,500 to be paid from the Mortgage payout on the due date.

The Buyer acknowledges that the property has ecological features that may limit the use that can be made of the lands. Such features include, but are not limited to, the presence of endanger species and the interaction of Lake Erie and the shoreline of property.

INITIALS OF BUYER(S): *DB*

INITIALS OF SELLER(S): *R*

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

**Properties**

PIN 64449 - 0084 LT Interest/Estate Fee Simple ☒ Split  
Description PT LT 16, CON 1 WFLT PT 2, 59R15051; TOWNSHIP OF WAINFLEET  
Address WAINFLEET

**Consideration**

Consideration \$ 2,200,000.00

**Transferor(s)**

The transferor(s) hereby transfers the land to the transferee(s).

Name LAKEWOOD BEACH PROPERTIES LTD.  
Address for Service 125 Carlton St.  
P.O. Box 29059  
St. Catharines ON L2R 7P9

I, Janice Raseta, Authorized Signing Officer, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Transferee(s)**

Capacity

Share

Name NIAGARA PENINSULA CONSERVATION AUTHORITY  
Address for Service 250 Thorold Road West  
3rd Floor  
Welland ON L3C 3W2

**Statements**

Schedule: I, TONY D'AMARIO, DECLARE THAT I AM THE CAO OF THE NIAGARA PENINSULA CONSERVATION AUTHORITY AND THE LAND IS BEING ACQUIRED FOR THE PURPOSE OF SHORELINE MANAGEMENT WORKS AND THE PROTECTION OF ENVIRONMENTALLY SENSITIVE LANDS.

The land is being acquired or disposed of by the Crown in Right of Ontario or the Crown in Right of Canada, including any Crown corporation, or any agency, board or commission of the Crown; or a municipal corporation.

STATEMENT OF THE TRANSFEROR (S): The transferor(s) verifies that to the best of the transferor's knowledge and belief, this transfer does not contravene the Planning Act.

STATEMENT OF THE SOLICITOR FOR THE TRANSFEROR (S): I have explained the effect of the Planning Act to the transferor(s) and I have made inquiries of the transferor(s) to determine that this transfer does not contravene that Act and based on the information supplied by the transferor(s), to the best of my knowledge and belief, this transfer does not contravene that Act. I am an Ontario solicitor in good standing.

STATEMENT OF THE SOLICITOR FOR THE TRANSFEE (S): I have investigated the title to this land and to abutting land where relevant and I am satisfied that the title records reveal no contravention as set out in the Planning Act, and to the best of my knowledge and belief this transfer does not contravene the Planning Act. I act independently of the solicitor for the transferor(s) and I am an Ontario solicitor in good standing.

**Signed By**

Barbara Cheryl Zeller	40 King Street West, Suite 5800 Toronto M5H 3S1	acting for Transferor(s)	Signed	2014 03 19
Tel	416-595-8500			
Fax	416-595-8695			

I have the authority to sign and register the document on behalf of the Transferor(s).



---

**LAND TRANSFER TAX STATEMENTS**

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In the matter of the conveyance of: 64449 - 0084 PT LT 16, CON 1 WFLT PT 2, 59R15051; TOWNSHIP OF WAINFLEET

BY: LAKEWOOD BEACH PROPERTIES LTD.

TO: NIAGARA PENINSULA CONSERVATION AUTHORITY % (all PINs)

---

1. TONY D'AMARIO

I am

- ☐ (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- ☐ (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- ☐ (c) A transferee named in the above-described conveyance;
- ☐ (d) The authorized agent or solicitor acting in this transaction for \_\_\_\_ described in paragraph(s) ( ) above.
- ☒ (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for NIAGARA PENINSULA CONSERVATION AUTHORITY described in paragraph(s) (c) above.
- ☐ (f) A transferee described in paragraph ( ) and am making these statements on my own behalf and on behalf of \_\_\_\_ who is my spouse described in paragraph ( ) and as such, I have personal knowledge of the facts herein deposed to.

---

2. I have read and considered the definition of "single family residence" set out in subsection 1(1) of the Act. The land being conveyed herein:

does not contain a single family residence or contains more than two single family residences.

---

3. The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	1,212,500.00
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	0.00
(ii) Given Back to Vendor	987,500.00
(c) Property transferred in exchange (detail below)	0.00
(d) Fair market value of the land(s)	0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	2,200,000.00
(h) VALUE OF ALL CHATTELS - items of tangible personal property	0.00
(i) Other considerations for transaction not included in (g) or (h) above	0.00
(j) Total consideration	2,200,000.00

---

6. Other remarks and explanations, if necessary.

1. This conveyance is to the Crown or a Crown Agency and therefore not subject to tax pursuant to subsection 2(8) of the Act.

---

**PROPERTY Information Record**

A. Nature of Instrument: Transfer  
LRO 59 Registration No. SN399598 Date: 2014/03/19

B. Property(s): PIN 64449 - 0084 Address WAINFLEET Assessment - Roll No

C. Address for Service: 250 Thorold Road West  
3rd Floor  
Welland ON L3C 3W2

D. (i) Last Conveyance(s): PIN 64449 - 0084 Registration No. SN139597  
(ii) Legal Description for Property Conveyed: Same as in last conveyance? Yes ☐ No ☒ Not known ☐

E. Tax Statements Prepared By: Ronald Neil Brady  
63 Ontario Street, P.O.  
Box 307  
St. Catharines L2R 6V2

## Appendix I

Letter from Betty Konc, former Township of Wainfleet Alderman 2010-2018.

Dear NPCA board members,

As a former alderman for the past 2 terms and as an activist against the regional proposal many years ago for a water sewer pipeline down the shore of Wainfleet, I feel I must bring to your attention the development of the former Easter Seals Camp, Lakewood.

This development was never a good idea and now, with several severe wind storms in the very recent past damaging this property, it is even less of a good idea.

There have been over 200 trees removed from this property all in the name of "maintenance" as well as the removal of most of the shrubs and vegetation at the lake front portion of the property, which, by the way, is where 35 of the 41 condos are supposed to be built. Had they been built they may be out in the lake at this point.

This property is in a flood zone and is also adjacent hazard land, both, I understand, are areas that are not to be built on.

The developer has proposed to raise the property by one foot in order to lift it out of the flood plain, however, there is photographic evidence of this property flooding when it was in use as the camp, so my question is how is raising the property one foot going to stop the lake from roaring into this property\*, particularly when most of the vegetation has been removed and, oh yes, about 30 feet of frontage has been taken back by the lake??

Development for the sake of development along the Lakeshore is now something we all need to take more seriously due to these storms. Endangering property and lives is not worth it.

The NPCA purchased about 13 acres a few years ago and are supposed to be trying to figure out what to do with that acreage. Most of it is wet land and Fowler Toad area. There has been a privately owned backhoe on said property draining the water in trench down to the beach with tracks, by said backhoe, leading back to the property immediately to the east of the 13 acres. Are any of you aware of this? There are photos available, so I am told, of the damage that has been done to the trees and again this is Fowler Toad space, heavy equipment is frowned on.

I am urging this board to take a second look at this property and proposal and reverse any approvals that may have been given in the past, especially in light of the severe storms experienced of late with no chance that future storms are going to be any less severe. Media has it that the NPCA has taken steps to rectify other approvals and/or are looking a second time at approvals that may have been given under different leadership for the wrong reasons.

Respectfully,  
Betty Konc  
905-380-6432

Sent by e-mail January 26, 2020.

\*Update: The property was raised one foot which was washed away in the October 31<sup>st</sup> storm.

## Appendix J

### Wainfleet residents mobilize against condo development

OMB appeal filed against site plan approval

NEWS Aug 30, 2017 by [Steve Henschel](#) Port Colborne Leader



Upwards of 200 Wainfleet residents like Gerry Prentice gathered at Port Colborne Brethren in Christ Church to voice concerns over a proposed 41-unit condo development on the Lake Erie shore. - Steve Henschel/Metroland



A total of 41 condo units could crop up on beachfront of the former Easter Seals Summer Camp should a proposed development move forward. - Steve Henschel/Metroland



WAINFLEET — A 13-year-old property development is once again raising the ire of Wainfleet residents who fear the rural municipality is being sold off to big-city developers.

The development from Lakewood Beach Properties Ltd., 41 condo units on 35 acres of waterfront property formerly occupied by the Easter Seals Summer Camp on the south side of Lakeshore Road to the east of Station Road, saw its first approval requests submitted back in 2005, well before a myriad of provincial and municipal planning regulations came into play. Those new regulations would prevent such a development being approved in 2017, however, previous approvals and a 2009 Ontario Municipal Board (OMB) ruling mean developers can still go ahead with the plan, pending council approval of its draft site plan. That site plan was in front of council on July 18, with council approving the draft plan of condominium in a 3-2 vote. While the plan of condominium may have passed the site plan was held off, with developers failing to meet one of the township's nearly 60 requirements, specifically in failing to address storm water management issues.

While construction will not be permitted until the site plan is approved a growing number of citizens have begun to voice opposition to the development, especially after an erroneous number circulated by the developer, local opinion columnists and opponents of the development placed the project within a larger supposed plan to bring tens of thousands of new residents to the township by 2031.

"Lakewood is the thin end," said Andrew Watts, who has been a vocal opponent of the project. On Tuesday night, he and like-minded residents held a rally of sorts at Port Colborne Brethren in Christ Church under the banner of "save Wainfleet" to mobilize support for their cause. Roughly 200 were in attendance, many raising fears that the development will see Wainfleet stripped of its agricultural character in favour of big city developments. Watts has filed an OMB appeal since the July 18 meeting.

"It is like nothing that has ever been done in Wainfleet before," said Watts, explaining that no condo development with Lakewood's level of density has ever cropped up in the municipality of just over 6,000 residents.

"The way it (Wainfleet) needs to be is the way it is now ... and it needs to stay this way forever," said resident Ryan Lacharity.

The development will indeed be the first condominium project in Wainfleet, however, it is unlikely a similar development will ever pass muster in the township. **Township planner Sarah Ivins explained the provincial Growth Plan for the Golden Horseshoe passed in 2006 limits condominium developments to lands within the boundaries of Wainfleet's seven historic**

hamlets: Burnaby, Ostryhon Corners, Winger, Chambers Corners, Wellandport, Hendershot Corners and Beckett's Bridge.

**"If someone were to come in today and propose the same thing we would say no, it doesn't meet policy," said Ivins.**

Lakewood, however, predates that, as its initial application hit the township in 2005, according to Ivins. With approval from the previous council in 2007 and an unsuccessful private appeal to block the development at the OMB in 2009 Ivins explained the township cannot overturn the approval of 41 units.

**Wainfleet Mayor April Jeffs echoed those sentiments, noting council's hands are essentially tied beyond guiding the process through the site planning process.**

An added comment from Paul Lowes Township consultant Planner, Township Council Meeting Tuesday, July 18 2017 who stated: **"..if a similar landowner came before Council today and asked for an Official Plan amendment for more than three lots [on the Lakewood Property], it would not be permitted."**

## **Keep Wainfleet rural: residents**

Public meeting packed with citizens opposing Lakewood development

**NEWS Dec 15, 2006 Niagara This Week - St. Catharines**

If public opinion at Tuesday night's council meeting was any indication, the owners of the former Lakewood Camp are going to have a hard time convincing residents an 81-house subdivision is right for the township.

There wasn't a seat left empty as Wainfleet council held a public meeting under the planning act in a effort to gather input, from both the developer and the public, about the proposed development of the former Easter Seals camp on the Wainfleet lakeshore.

In order to build 81 houses on the 50.1 acre site as planned, the developers will need approval for both an official plan and a zoning bylaw amendment.