

The Township of The Archipelago

Recommendation Report

Report No.: Report Number

Date: July 17, 2025

Originator: Cale Henderson, Director of Development Services & Environmental Initiatives

Subject: Recommendation Report – Zoning By-law Amendment No. Z03-25

Owner: David Ballentine & Nancy Regan

Location: 1 A472 (Double Island), The Archipelago

RECOMMENDATION

Staff recommends that the proposed Zoning By-law Amendment be denied as it is unnecessary and conflicts with Building Code Commission ruling and the restrictions of the Ontario Building Code.

PROPOSAL

The purpose of the proposed Zoning By-law Amendment No. Z03-25 is to rezone Island A472 (Double Island), PCL 7096 SEC NS; Double Island or Island 472 Harrison in the Georgian Bay of Lake Huron, The Archipelago from the 'Coastal/Island Residential (CR)' Zone to the 'Coastal/Island Residential Exception 98 (CR-98)' Zone.

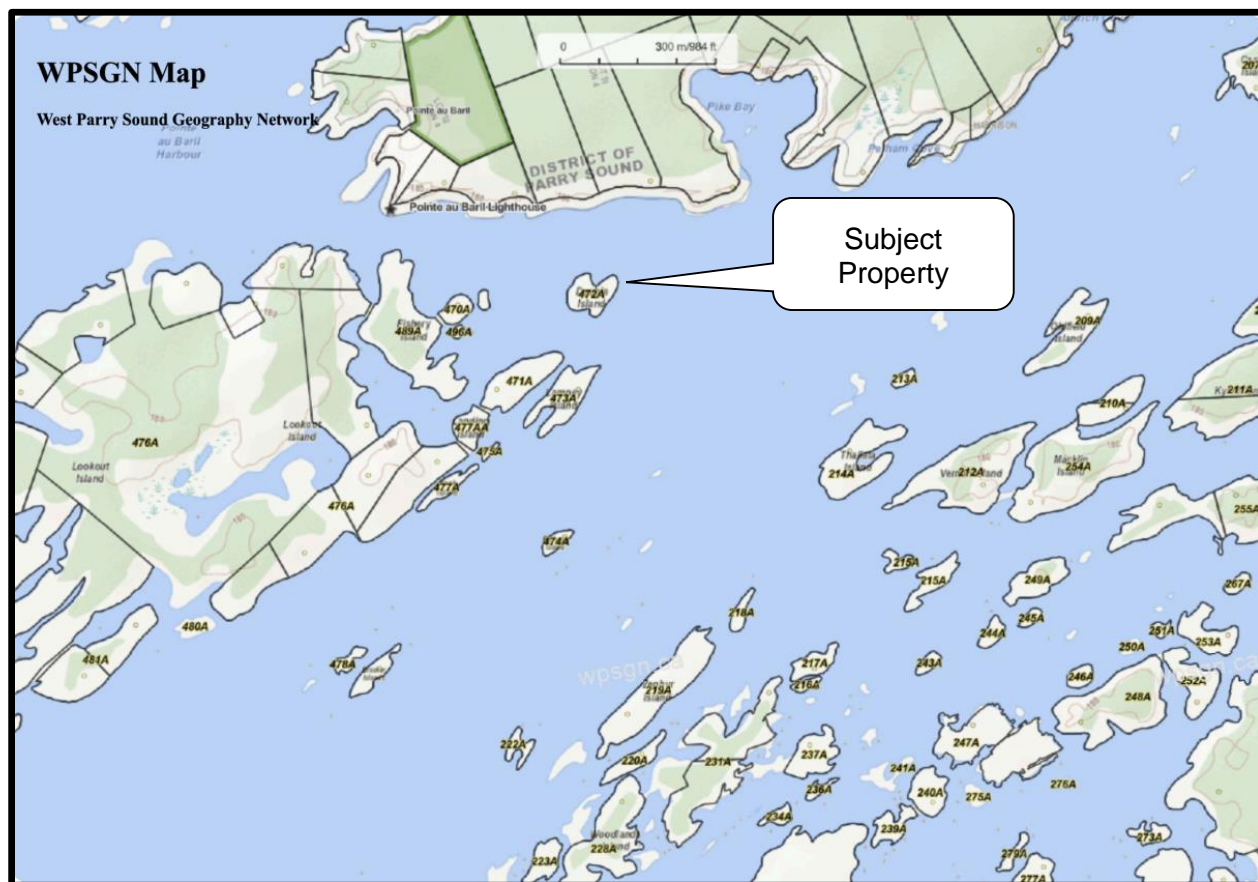
The effect of proposed Zoning By-law Amendment No. Z03-25 is to allow a Class 5 wastewater system (holding tank).

A copy of the application and planning justification report are attached to this report as Appendix A & B, respectively, and the zoning by-law amendment is attached as Appendix C.

PLANNING INFORMATION

Zoning By-law Amendment Application Z07-24	
Property:	1 A472 Island (Double Island)
Official Plan Neighbourhood:	Pointe au Baril Islands
Ward:	3
Existing Zone:	Coastal Island Residential (CR)
Existing Use:	Vacant
Property Size:	0.47 ha (1.17 ac)

LOCATION MAP



BACKGROUND

The subject property, Island A472 (Double Island), is located within the Pointe Au Baril Islands neighbourhood immediately south-east of the Pointe au Baril Lighthouse. The subject property has an approximate lot area of 0.47 ha (1.17ac) and lot frontage of 90 m (295 ft). The property is currently zoned Coastal Island Residential (CR) within Comprehensive Zoning By-law No. A2000-07, as amended. The island is horseshoe shaped with minimal vegetation. The island primarily consists of barren rock with steep gradients towards the water with minimal existing soils.

Historically, in the late 1800's and early 1900's. the property was used as a local fishing depot and contained multiple buildings (Appendix D - historical photos). However, according to municipal records (Appendix E - Assessment and Aerial Photography), the property has been vacant since prior to the formation of the Township in 1980. There are no municipal records of any prior sewage system or privies for the property, though the applicants have advised that historically the property may have been serviced by privies. The applicants obtained the property in 2017 and were seeking to develop the property. Due to the topography and minimal

soils, the owners have experienced challenges with obtaining a building permit for a sewage system in accordance with the requirements of the Ontario Building Code. Starting in 2020, the owners have submitted multiple building permit applications and appeals to the Building Code Commission to obtain a permit for a sewage system in accordance with the requirements of Part 8 of the Ontario Building Code. The Building Code Commission (BCC) has ruled that a Class 5 sewage system (holding tank) is not permitted (Appendix F – BCC Ruling No.:22-04-1596). Per Section 24(4) of the Building Code Act, the decision of the Building Code Commission (BCC) is final. A subsequent application and decision of the Building Code Commission (BCC) deemed a Class 4 Shallow Buried Trench to comply with the Ontario Building Code and a building permit has been issued (Appendix G – BCC Ruling No.: 24-12-1642).

The applicant has submitted a Zoning By-law Amendment application to service the island with a class 5 Sewage System (Holding Tank), as opposed to the permitted Class 4 Shallow Buried Trench as approved by the Building Code Commission.

PUBLIC MEETING SUMMARY

A public meeting was completed on June 20, 2025. No public comments were received prior to the meeting, and one member of the public attended the meeting virtually. The owners, Mr. David Ballentine and Ms. Nancy Regan, and their agent Mr. John Jackson attended the meeting. Mr. Jackson spoke to the application. Council provided general comments regarding the proposal and the overall appropriateness of Class 5 septic systems (holding tanks) within the Township.

PLANNING ANALYSIS

1. PROVINCIAL PLANNING STATEMENT, 2024

The Provincial Planning Statement, 2024 (PPS 2024) is a province-wide land use planning policy framework issued under Section 3 of the Planning Act, which requires that all decisions affecting planning matters shall be consistent with the minimum standards set in the Provincial Planning Statement.

Section 3.6 of the Provincial Planning Statement, 2024 provides for policy direction with respect to sewage and water services. Within this policy and outlined in Subsection 3.6.3 of the Provincial Policy Statement, where municipal services or communal services are not available, planned or feasible, private or individual on-site sewage services are permitted where appropriate. Due to the landscape, geography and services of the Township of The Archipelago, private sewage systems are typical and the norm for our community.

The PPS, 2024 does not provide direction on type or class of private on-site sewage services that are permitted, rather the statement connects back to the Building Code Act through the definitions. Within Section 8: Definitions of the PPS 2024, Individual on-site sewage services are defined as:

'Individual on-site sewage services: means sewage systems, as defined in O. Reg. 332/12 under the Building Code Act, 1992, that are owned, operated and managed by the owner of the property upon which the system is located.'

Within the Township of The Archipelago, allowing individual on-site sewage systems is consistent with the policy direction of the PSS, 2024. However, the PPS, 2024 links the definition of sewage systems to Ontario Building Code Act and the relevant O. Reg. and recognizes that the design and installation of septic systems is not regulated by the Planning Act.

2. OFFICIAL PLAN

The Official Plan provides local policy direction on private sewage disposal systems. Section 11.3 states:

'11.3 All development is to proceed on the basis of private individual water and sewage disposal systems, constructed and maintained in accordance with the applicable legislation.

11.6 Where development is proposed, lots will be of sufficient size and suitable area to adequately accommodate such services, and will satisfy the authority having jurisdiction with respect to the approval of private potable water supply and/or private sewage disposal facilities.

The above policies recognize that all development will be serviced by private individual water and sewage disposal systems, as the Township does not provide any municipal services. A Class 5 sewage system (holding tank) is not considered a complete sewage disposal system and is reliant on Class 7 Sewage haulers (i.e. barge and trucking) to regularly remove the sewage and transport to a treatment facility.

Further, the policy recognizes that sewage disposal systems will be constructed in accordance with applicable legislation, which is the Building Code Act.

ZONING BY-LAW

The subject property is Zoned Coastal/Island Residential. In accordance with Section 6 – Coastal/Island Residential (CR), the subject property is permitted to be used residentially and developed with a dwelling and accessory buildings and structures. A septic system is a permitted accessory building on the subject property.

The Zoning By-law does not regulate the class of septic system and a Class 5 septic system (holding tank) would therefore comply. In specific circumstances, the Zoning By-law does prescribe setback requirements for septic systems; however, those setback requirements are either equivalent or greater and do not exempt or conflict with the requirements of the Ontario Building Code. The proposal is not seeking relief from setback requirements of the Zoning By-law or the Ontario Building Code.

The purpose of the amendment, as outlined in the application, is to obtain an exemption from the requirements of the Ontario Building Code. The Zoning By-law does not have the authority to provide relief or an exemption from the requirements of the Ontario Building Code. There are established procedures through the Ontario Building Code, including the Building Code Commission. As previously highlighted, the Building Code Commission has already considered a proposal for a Class 5 septic system (holding tank) and ruled that it is not permitted. The decision of the Building Code Commission, as per Section 24(4) of the Building Code Act, is final. The proposal conflicts with applicable legislation, being the Ontario Building Code and Building Code Act.

The Zoning By-law addresses any conflict with other laws. 'Section 2.5 – Relationship with Other By-laws' of the Zoning By-law states:

'Nothing in this By-law shall operate to relieve any person from the requirements of the Building Code or any By-law or requirements of the Township in force from time to time, or the obligation to obtain any license, permit, authority, or approval required under any By-law or law of the Township or other government authority. Any use established in violation of a predecessor of this By-law will be deemed to have been established unlawfully. Nothing in this By-law shall be construed to exempt any person from complying with the requirements of any other laws of the Township or from any law of the Province of Ontario or of Canada.'

Further, Section 2.6 a) of the Zoning By-law states:

'In their interpretation and application, the provisions of this By-law shall be held to be the minimum requirements adopted for the promotion of the public health, safety, convenience, or general welfare. Whenever the requirements of this By-law are at variance with the requirements of any other By-law, the most restrictive, or the By-law imposing the higher standards shall govern and apply. Nothing in this By-law shall be construed to exempt any person from complying with the requirements of any By-law of the Township or from any law of the Province of Ontario or of Canada.'

Per the Section 2.5 and 2.6 a), the Zoning By-law cannot conflict or exempt any person from complying with the requirements of the Ontario Building Code.

Further, Section 35(1) of the Building Code Act provides that: "This Act and the building code supersede all municipal by-laws respecting the construction or demolition of buildings." Council cannot pass a bylaw to circumvent the requirements of the Building Code. Even if the Zoning By-law explicitly permits a Class 5 sewage system (holding tank), such as is being requested by the applicants, it would still need to comply with the requirements of the Ontario Building Code. The Building Code Commission has already determined a Class 5 Sewage System on the subject property does not comply with applicable legislation and therefore a building permit cannot be issued.

CORRESPONDENCE

The proposed Zoning By-law Amendment application was circulated to the required agencies and property owners as per the requirement of the *Planning Act*, R.S.O. 1990, cP.13 and associated regulations. No comments were received prior to the public meeting held on June 20, 2025.

CONCLUSION

The proposed Zoning By-law Amendment application is seeking to explicitly permit a Class 5 sewage system (holding tank) on the subject property. The Zoning By-law does not prohibit its use and does not regulate classes of septic systems. The proposal is not seeking to provide new zoning rights for the subject property, rather it is simply making explicit what is already permitted.

As outlined within this report, the Building Code Act and the Ontario Building Code regulate the classes, construction and installation of septic systems. As outlined in Section 2.5 of the Zoning By-law and Section 35(1) of the Building Code Act, a municipal zoning by-law cannot conflict or supersede the Ontario Building Code. The Building Code Commission has already determined that a Class 5 sewage system (holding tank) does not comply with the Ontario Building Code and is not permitted on the subject property. The proposal is attempting to supersede or conflict with the Ontario Building Code and the ruling of the Building Code Commission.

As a result, the proposal is both unnecessary and will create confusion with the Planning regime and the Ontario Building Code. Even if the Zoning By-law was granted, this would not create any right to construct a Class 5 sewage system on the subject property, as the proposal would still not comply with the requirements of the Ontario Building Code, as already determined by the Building Code Commission.

RECOMMENDATION

Staff recommends that the proposed Zoning By-law Amendment be denied as it is unnecessary and conflicts with the Building Code Commission ruling and restrictions of the Ontario Building Code.

Respectfully submitted,



Cale Henderson, MCIP, RPP
Director, Development Services & Environmental Initiatives

ATTACHMENTS

1. Appendix A - Zoning By-law Amendment Application
2. Appendix B - Planning Justification Report
3. Appendix C - By-law Amendment
4. Appendix D - Historical Photos
5. Appendix E - 1980 Assessment Records & 1981 Aerial Imagery
6. Appendix F - Building Code Commission Ruling No.: 22-04-1596 - Class 5 Sewage System (holding tank)
7. Appendix G - Building Code Commission Ruling No.: 24-12-1642 - Class 4 Shallow Buried Trench