

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: December 22, 2023

CASE NO(S).:

OLT-23-000534

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:

Caivan (Perth GC) Limited

Subject:

Request to amend the Official Plan – Failure to adopt the requested amendment

Description:

To permit 940 single detached dwellings and townhomes, a nine-hole golf course, park and open space areas

Reference Number:

OPA-01-2023

Property Address:

141 Peter Street, Part of Lots 26 & 27, Concession 1, Part Lots 25, 26 & 27, Concession 2, Geographic Township of Bathurst, and Part Lot 1 in Southeast Half Lot 1, Concession 1, Part Lot 1 in Southwest Half Lot 1, Concession 2, Geographic Township of Drummond, now in the Town of Perth, County of Lanark

Municipality/UT:

Town of Perth / County of Lanark

OLT Case No.:

OLT-23-000939

OLT Lead Case No.:

OLT-23-000534

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

Applicant and Appellant:

Caivan (Perth GC) Limited

Subject:

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

Description:

To permit 940 single detached dwellings and townhomes, a nine-hole golf course, park and open space areas

Reference Number:

ZBL-03-2023

Property Address: 141 Peter Street, Part of Lots 26 & 27,
Concession 1, Part Lots 25, 26 & 27,
Concession 2, Geographic Township of
Bathurst, and Part Lot 1 in Southeast Half Lot 1,
Concession 1, Part Lot 1 in Southwest Half Lot
1, Concession 2, Geographic Township of
Drummond, now in the Town of Perth, County of
Lanark

Municipality/UT: Town of Perth / County of Lanark

OLT Case No.: OLT-23-000940

OLT Lead Case No.: OLT-23-000534

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

Applicant and Appellant: Caivan (Perth GC) Limited

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

Description: To permit 940 single detached dwellings and
townhomes, a nine-hole golf course, park and
open space areas

Reference Number: 09-T-22001

Property Address: 141 Peter Street, Part of Lots 26 & 27,
Concession 1, Part Lots 25, 26 & 27,
Concession 2, Geographic Township of
Bathurst, and Part Lot 1 in Southeast Half Lot 1,
Concession 1, Part Lot 1 in Southwest Half Lot
1, Concession 2, Geographic Township of
Drummond, now in the Town of Perth, County of
Lanark

Municipality/UT: Town of Perth / County of Lanark

OLT Case No.: OLT-23-000534

OLT Lead Case No.: OLT-23-000534

OLT Case Name: Caivan (Perth GC) Limited v Lanark County

Heard: December 14, 2023 by Video Hearing

APPEARANCES:**Parties**

Caivan (Perth GC) Limited

County of Lanark

Town of Perth

Counsel

Patrick Harrington

Gregory Meeds
Morgan McCartney

Tony Fleming

MEMORANDUM OF ORAL DECISION DELIVERED BY S. DIXON AND ERIC S. CROWE ON DECEMBER 14, 2023 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This Decision and Order arises from the first Case Management Conference (“CMC”) held regarding appeals filed by Caivan (Perth GC) Limited (“Appellant”) pursuant to s. 22(7), s. 34(11) and s. 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (“Act”), concerning Official Plan Amendment (“OPA”), Zoning By-law Amendment (“ZBA”) and Draft Plan of Subdivision (“DPS”) applications (together, “Applications”) within the Town of Perth (“Town”) in Lanark County (“County”).

[2] The Applications (filed by the Appellant) seek to redevelop approximately 17 hectares of the existing Perth Golf Course located at 141 Peter Street in the Town (“Subject Lands”) with approximately 940 dwelling units.

[3] The Town is the approval authority for the OPA and ZBA and did not make a decision on same within the statutory timeframe prescribed by the Act. The County is the approval authority for the DPS and similarly did not make a decision within the statutory timeframe prescribed by the Act. The Appeals are being heard together for administrative purposes.

AFFIDAVIT OF SERVICE

[4] The Tribunal was in receipt of an Affidavit of Service sworn by Natalie Hickey on November 17, 2023, which was marked as Exhibit 1. There were no issues with the service of notice for the CMC and as such, no further notice is required.

PARTY STATUS REQUEST

[5] In advance of the CMC, the Tribunal received a Party Status Request from Richard Schooley. Mr. Schooley was represented at the CMC by Greg Anderson, who submitted that a different representative will be retained for the remainder of the proceedings should Mr. Schooley's request be granted.

[6] Mr. Schooley informed the Tribunal that he is a resident in the neighbouring municipality of Tay Valley and has been involved with the broader community since 1959, including 47 years working in the Town. He is a former member of the Town Council and a founding member of the Downtown Heritage Perth Business Improvement Area. He advised the Tribunal that he represents the interests of over 150 community members that share his concerns with the Applications. The community members are not yet incorporated as a single residents' association but may seek incorporation in the near future.

[7] It was clear to the Tribunal through the submissions of Messrs. Schooley and Anderson that their request for Party Status is contingent on the positions and issues raised by the Town and County. In short, if the issues articulated by the Town and County reflect those of Mr. Schooley and his supporting community members, then Mr. Schooley (or the residents' association, should they incorporate) will no longer seek Party Status.

[8] On consent of the Parties and Mr. Schooley, the Tribunal deferred its decision on the Party Status Request to the next CMC (see Paragraph [20], below). This will provide Mr. Schooley time to consider the potential incorporation of the community members

whose interests he represents, as well as gain a clearer understanding of the issues to be advanced by the Town and County.

[9] As a potential Non-Appellant Party, the Tribunal directed that, should he continue to seek Party Status at the next CMC, Mr. Schooley identify the issue(s) that he intends to shelter under. However, after the conclusion of the CMC the Panel recognised that it erred in this direction. Rule 8.3 of the Tribunal's Rules of Practice and Procedure ("OLT Rules") states the following:

8.3 Non-Appellant Party

A party to a proceeding before the Tribunal which arises under any of subsections 17(24) or (36), 34(19) or 51(39) of the *Planning Act* who is not an appellant of the municipal decision or enactment may not raise or introduce a new issue in the proceeding. The non-appellant party may only participate in these appeals of municipal decisions by sheltering under an issue raised in an appeal by an appellant party and may participate fully in the proceeding to the extent that the issue remains in dispute. A non-appellant party has no independent status to continue an appeal should that appeal be withdrawn by an appellant party.

[10] The Appeals before the Tribunal in this proceeding are pursuant to ss. 22(7), 34(11) and 51(34) of the Act, and not one of the four subsections referenced in Rule 8.3, above. Therefore, no sheltering is required by Mr. Schooley should he be conferred Party Status.

[11] Rather than identifying the issue(s) under which he intends to shelter, the Tribunal hereby directs Mr. Schooley – should he decide to pursue his request for Party Status – to identify his issues by no later than **Monday, January 29, 2024**, in accordance with Paragraph [19], below.

PARTICIPANT STATUS REQUESTS

[12] The Tribunal received 49 requests for Participant Status in advance of the CMC. The requests generally identified the following areas of concern in relation to the Applications:

- Site access and traffic impacts;
- A substantial increase to the Town's population;
- Infrastructure capacity;
- Housing options, including affordable housing and a mix of unit/density types;
- Environmental impacts on adjacent wetlands and the Tay River;
- Public infrastructure, including sidewalks;
- Supporting uses, including schools, daycares, commercial, retail, and service uses; and
- Sustainability.

[13] Three additional requests for Participant Status were heard at the CMC from Catherine Illingworth, Stephanie Corrin, and John McKenty, who share concerns similar to those outlined above.

[14] On consent of the Parties, all 52 requests for Participant Status were granted by the Tribunal. A list of the individuals who have been granted Participant Status is attached hereto as Schedule 1.

[15] The Tribunal directed that no additional Participant Status Requests will be granted in these proceedings. Notwithstanding that direction, the Tribunal notes that should Mr. Schooley ultimately not seek or be granted Party Status, he may request Participant Status in the alternative.

[16] The Tribunal directed that all Participants who have not filed a Participant Statement – or any Participants who wish to amend their Statements – do so by no later than **Monday, January 22, 2024**. After that date, any proposed amendments to the Participant Statements may only occur on consent of the Parties or by Order of the Tribunal in accordance with Rule 7.8 of the OLT Rules.

OPPORTUNITIES FOR SETTLEMENT

[17] The Parties advised the Tribunal that they are open to settlement discussions that may result in the narrowing of issues or avoidance of a contested hearing. However, the Tribunal gathers from the submissions of the Parties and Participants that substantive changes to the Applications will be required to achieve that outcome. Should the Parties determine that Tribunal-led mediation could be of assistance in that regard, the Parties are encouraged to contact the Tribunal's Case Coordinator to request same.

PROCEDURAL ORDER AND ISSUES LIST

[18] Prior to the CMC, the Tribunal was in receipt of a Draft Procedural Order ("DPO") that includes the Appellant's draft issues but does not yet include any issues for the Town or County.

[19] The Tribunal directed the Parties to submit a revised DPO and Issues List to the Tribunal no later than **Monday, January 29, 2024**. The revised DPO and Issues List shall be updated to reflect: (1) the deadline for filing or amending Participant Statements in accordance with Paragraph [16], above; (2) the Hearing dates described in

Paragraph [21], below; (3) the issues of all Parties; and (4) the proposed issues of Mr. Schooley should he continue to seek Party Status.

SECOND CMC AND HEARING DATES

[20] To consider the revised DPO and Issues List, as well as Mr. Schooley's Party Status Request, the Tribunal scheduled a second CMC for **Monday, February 12, 2024** at **10 a.m.** by Video Hearing.

[21] The Appellant requested that a four-week hearing also be scheduled. After receiving submissions from all of the Parties as to their collective availability for a hearing and the number and types of witnesses that may be required to testify – including the potential coordination of issues and witnesses between the Town and County – the Tribunal scheduled an 18-day Video Hearing commencing **Monday, August 19, 2024** at **10 a.m.** The Tribunal will not sit on Monday, September 2, 2024 or Monday, September 9, 2024. The Hearing is therefore scheduled to conclude on Friday, September 13, 2024.

[22] Parties and Participants are asked to log into the Video Hearing events at least **15 minutes** before the start of the event to test their video and audio connections:

Monday, February 12, 2024 at 10 a.m. (one-day CMC)

GoTo Meeting: <https://meet.goto.com/558205565>

Access code: 558-205-565

Audio-only telephone line: +1 (647) 497-9373 or (Toll Free) 1-888-299-1889

Audio-only access code: 558-205-565

Monday, August 19, 2024 at 10 a.m. (18-day Merit Hearing)

GoTo Meeting: <https://meet.goto.com/943363669>

Access code: 943-363-669

Audio-only telephone line: +1 (647) 497-9373 or (Toll Free) 1-888-299-1889

Audio-only access code: 943-363-669

[23] Parties and Participants are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at [GoToMeeting](https://app.gotomeeting.com/home.html) or a web application is available: <https://app.gotomeeting.com/home.html>.

[24] Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into the audio-only telephone lines as indicated above.

[25] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the Video Hearing to ensure that they are properly connected to the event at the correct time. Questions prior to the hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

ORDER

[26] **THE TRIBUNAL ORDERS** that a revised Draft Procedural Order and Issues List be submitted to the Tribunal for consideration no later than **Monday, January 29, 2024**.

[27] **THE TRIBUNAL ORDERS** that a second Case Management Conference will be held by Video Hearing on **Monday, February 12, 2024 at 10 a.m.**

[28] **THE TRIBUNAL ORDERS** that a Hearing of the Merits will be held by Video Hearing commencing **Monday, August 19, 2024 at 10 a.m.** 18 consecutive days have been set aside for the Hearing, excluding Monday, September 2, 2024 and Monday, September 9, 2024.

[29] There will be no further notice.

[30] This Panel is not seized.

“S. Dixon”

S. DIXON
MEMBER

“Eric S. Crowe”

ERIC S. CROWE
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.

SCHEDULE 1**Participants to OLT-23-000939, OLT-23-000940 and OLT-23-000534**

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