

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** May 08, 2024

**CASE NO(S).:**

OLT-24-000035

**PROCEEDING COMMENCED UNDER** subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant:

Appellants

Township of Muskoka Lakes

Miller Paving Limited, Our Muskoka  
Stakeholders Association, Elizabeth &  
Anthony Lipa, and Leslie Carr

Subject:

Description:

Proposed Official Plan Amendment

OPA - Ensure the Official Plan Conforms to  
Provincial and District Policy

Reference Number:

Property Address:

Municipality/UT:

OLT Case No.:

OLT Lead Case No.:

OLT Case Name:

2022-171/PLN-7-14/09/23

Town Wide

Muskoka Lakes/Muskoka

OLT-24-000035

OLT-24-000035

Miller Paving Limited et al. v. Muskoka  
(District)

**Heard:**

March 21, 2024 by Video Hearing

**APPEARANCES:**

**Parties**

Elizabeth Lipa

Miller Paving Limited,  
Our Muskoka Stakeholders Association,  
and Leslie Carr

**Counsel**

John Ewart

Marc Kemerer

Township of Muskoka Lakes

Edward Veldboom

District Municipality of Muskoka

Jennifer Savini  
Wayne Fairbrother

## **DECISION DELIVERED BY DAVID BROWN AND ORDER OF THE TRIBUNAL**

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### **INTRODUCTION**

[1] The Tribunal convened a Case Management Conference (“CMC”) with respect to Appeals filed by Elizabeth Lippa (“Lippa”), Miller Paving Limited (“MPL”), Our Muskoka Stakeholders Association (“MSA”), and Leslie Carr (“Carr”) (together the “Appellants”) pursuant to s. 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the “Act”) against the District Municipality of Muskoka’s (“District”) approval, as modified, of the new Township of Muskoka Lakes’ (“Township”) Official Plan (“TMLOP”).

[2] The Township undertook a comprehensive review of the Township’s former Official Plan and, on October 30, 2022, approved the TMLOP. The District reviewed the TMLOP, modified it, and approved the modified TMLOP on November 20, 2023. The TMLOP is intended to provide a framework to manage growth and physical change by establishing updated goals, objectives, and policies which are intended to guide decision-making in the Township affecting land use planning through to 2046.

[3] An Affidavit of Service sworn by Heather Allen on February 20, 2024, attesting to the giving of notice for this proceeding, was marked as **Exhibit 1**.

[4] Ms. Savini advised that there are a number of status requests to be addressed, and as such, the Parties have not initiated discussions with respect to narrowing issues and the creation of a Procedural Order (“PO”). She recommended that a second CMC would be advisable once the Parties have been determined and the respective Counsel and representatives have had discussions about the issues.

## REQUESTS FOR STATUS

[5] The Tribunal received six requests for Party status and a single request for Participant status, which were marked as Exhibits as set out below:

1. Party Status Request Form from Friends of Muskoka ("FOM") (**Exhibit 2**);
2. Party Status Request Form from Leonard Lake Stakeholders Association ("LLSA") (**Exhibit 3**);
3. Party Status Request Form from Muskoka Lakes Association ("MLA") (**Exhibit 4**);
4. Party Status Request Form from Skeleton Lake Cottagers Organization Inc. ("SLCO") (**Exhibit 5**);
5. Party Status Request Form from Ross Earl (**Exhibit 6**);
6. Party Status Request Form from Erin Dixon (**Exhibit 7**); and
7. Participant Status Request Form from Christine Condry (**Exhibit 8**).

### FOM, LLSA, and MLA Party Status Request

[6] Lee English attended on behalf of FOM, LLSA, and MLA, explaining that he represents three cottage owner's associations within the Township that have actively participated in the preparation of the new TMLOP. His clients have been working with the Township since 2019 on the drafting of the TMLOP. Mr. English explained that his clients each support the new TMLOP and, therefore, did not appeal the adoption of the TMLOP by the District.

[7] Mr. English referred to Rule 8.2 of the Tribunal's Rules of Practice and Procedure ("Rules"), which provides the Tribunal may add a party to a proceeding when that person satisfies the applicable legislative tests provided that their presence is necessary to enable the Tribunal to adjudicate effectively and completely on the issues. Mr. English contends that his client's participation as a Party will contribute to the proceedings and the effective adjudication of the issues in the proceeding.

[8] Mr. Veldboom advised that the Township supports the requests from FOM, LLSA, and MLA, noting that the Township welcomes the participation and input from community groups, and FOM, LLSA, and MLA have been active in the consultation process leading up to the approval of the TMLOP. Counsel for the District advised they support the requests, and Counsel for Lippa advised that they do not oppose the requests.

[9] Mr. Kemerer, on behalf of MPL, MSA, and Carr, responded that the interests and issues of FOM, LLSA, and MLA are aligned with the Township, and their interests will be addressed by the Township. There is no need to add three additional Parties to the proceedings as they will not be providing different evidence from that of the Township.

[10] Mr. Kemerer directed the Tribunal to the decision, *TRG (Cherokee) Holdings Inc. v. Gravenhurst (Town)*, 2024 CarswellOnt 1602 ("*Cherokee v. Gravenhurst*"), wherein the Tribunal, at paragraph 13, refused a request for party status from a community group, as the Tribunal found that: "... the issues raised by MLA and MBOPA have been sufficiently addressed [by the Town's issues] and that their added involvement will not contribute to the fair and just resolution of the matter." Mr. Kemerer contends that denying the requests for Party status does not prevent the issues being raised by the Township and will not add additional time and costs to the proceedings.

[11] Mr. English, in response to the submission with respect to *Cherokee v. Gravenhurst*, noted that the matter being considered by the Tribunal was a site-specific

application to amend the Official Plan, and this is distinct from the subject Appeals which impact the Township.

[12] In consideration of the applicable legislative tests, Mr. English directed the Tribunal to the decision, *2606609 Ontario Inc. v. Kingston (City)*, 2023 CarswellOnt 3341 ("*2606609 v. Kingston*"), wherein the Tribunal considered the six factors for adding a party. *2606609 v. Kingston* referenced the Ontario Municipal Board decision *Oakville (Town) Re.*, 2010 CarswellOnt 7078, in which these factors were described and have come to be referred to as the Oakville Factors.

[13] The Oakville Factors are summarized as:

1. A prior appeal exists;
2. The public interest is advanced;
3. No prejudice results to anybody;
4. There is a direct interest;
5. No multiplicity of proceedings result; and
6. Involvement in the historical background.

*Oakville Factor 1 (Prior Appeal)*

[14] Mr. English advised that FOM, LLSA, and MLA have actively participated in the TMLOP process and support the TMLOP in the adopted form. FOM, LLSA, and MLA have filed the requests for status to allow them to continue to participate in the TMLOP approval process.

*Oakville Factor 2 (Public Interest)*

[15] The TMLOP applies across the Municipality and is not site-specific. Mr. English reiterated that FOM, LLSA, and MLA have taken a leading role in the preparation of the new Official Plan and did not appeal the approval of TMLOP by the District as they support the plan. Mr. English submitted that requiring interested parties to file an appeal of an Official Plan that they support to “protect their right to participate” would establish a precedent that would have undesirable consequences. He referred the Tribunal to *1063755 Ontario Ltd. v Grey (County)*, 2023 CarswellOnt 10265 (“*1063755 v. Grey*”) where in paragraph 27 the Tribunal states, “...it is not in the public interest to compel municipalities to appeal all amendments they support in order to preserve their to take part in the hearing.” In *2606609 v. Kingston*, the Tribunal found, in paragraph 16, that the public interest is advanced and party status will serve the public interest of ensuring the issues and concerns are presented for adjudication.

[16] Mr. Kemerer submitted that the public interest will be addressed by the involvement of the Township in these Appeals and the issues that the Township raises with the Tribunal for adjudication.

*Oakville Factor 3 (Prejudice)*

[17] Mr. English submits that no prejudice will arise from adding FOM, LLSA, and MLA as Parties, notwithstanding the assertions from the Appellants, that including FOM, LLSA, and MLA will add time to the hearing process. Mr. English contends that time should not be a determinate, and directed the Tribunal to paragraph 31 of *1063755 v. Grey*, which states,

While adding the Town as a party may result in some increase in the time and cost associated with the hearing, the Tribunal finds that considerations of procedural fairness and effective dispute resolution are paramount, and any prejudice to the Appellants caused by adding the Town as a party is outweighed by the potential for prejudice to the Town were it to be precluded from advancing its position...

[18] Mr. English submitted that Rule 8.3 only permits FOM, LLSA, and MLA to address issues raised by the Appellants. His client is aware of the process and the expectations of a non-appellant party. The exclusion of FOM, LLSA, and MLA from participating in the Merit Hearing would eliminate years of work and participation in the creation of the TMLOP and would result in a prejudice against FOM, LLSA, and MLA.

[19] Mr. Kemerer submits that adding three additional Parties to these proceedings will lengthen the Merit Hearing and increase the costs for his clients, which will create prejudice against his clients.

*Oakville Factor 4 (Direct Interest)*

[20] Mr. English submitted that the interests of FOM, LLSA, and MLA are clearly set out in their respective status requests, and they are requesting the ability to continue to provide input into the policies contained within the TMLOP. FOM, LLSA, and MLA have retained a land use planner and will work with the Municipality and the District to address issues.

*Oakville Factor 5 (Multiplicity of Proceedings)*

[21] The involvement of FOM, LLSA, and MLA will not create any additional proceedings related to these Appeals, and Mr. English submitted that not granting status to FOM, LLSA, and MLA in this matter could set a precedent that would require interested parties supporting planning applications to be forced to appeal all decisions to ensure that they have status before the Tribunal should an appeal be filed objecting to such application.

*Oakville Factor 6 (Historical Background)*

[22] FOM, LLSA, and MLA have been actively involved in the TMLOP process from the beginning, and Mr. English submits that their involvement clearly meets the test of Oakville Factor 6.

[23] Mr. Kemerer submits that the involvement of FOM, LLSA, and MLA in the TMLOP process has identified their issues to the Township, which can be addressed by the Township, and their continued involvement will not contribute further to the Merit Hearing.

[24] The Tribunal is satisfied that the request for Party status by FOM, LLSA, and MLA meets the requirements of s. 17(44.1) and (44.2) of the Act. The grounds cited are reasonable, and the Tribunal finds, as did the Tribunal in paragraph 32 of *1063755 v. Grey*, that the representation of the Parties by experienced counsel, capable of avoiding duplication of argument and evidence at the Merit Hearing, is sufficient to ensure a fair, just, and expeditious hearing. Additionally, the Tribunal's consideration of the Oakville Factors as set out by Mr. English supports the Status requests.

**SLCO Party Status Request**

[25] David Donnelly attended and requested Party status on behalf of SLCO. He advised that he adopts the arguments advanced by Mr. English and submits that, as experienced counsel, he will not repeat the arguments tendered by Mr. English. He explained that SLCO was formed in 1989 to protect the cultural heritage of Skeleton Lake.

[26] Mr. Donnelly noted that SLCO has appealed an application filed by Lipa in connection with a proposed aggregate pit operation in proximity to Skeleton Lake. The matter has been dormant since 2019 and they are not aware of any changes to that proposal.



[27] With respect to the Oakville Factors, Mr. Donnelly submitted the following:

*Oakville Factor 1 (Prior Appeal)*

[28] Mr. Donnelly submitted that, while there is an outstanding aggregate pit appeal, the matter before the Tribunal is not related as the issues in dispute apply Township-wide. The issues in the Appeals do not overlap, and there is duplication of issues between the Appeals.

*Oakville Factor 2 (Public Interest)*

[29] SLCO has been an active participant in the creation of the policies in the TMLOP, specifically the policies affecting lake stewardship, having made multiple submissions to the Township during the TMLOP review process.

*Oakville Factor 3 (Prejudice)*

[30] Mr. Donnelly conceded that there will be some prejudice with the addition of time and costs as a result of the additional Parties and this is a normal part of the appeal process. However, he noted that experienced counsel will ensure that duplication of evidence is avoided, and that efficiencies can be found throughout the Merit Hearing process.

*Oakville Factor 4 (Direct Interest)*

[31] SLCO has gone to great lengths to inform policy and address their issues, which specifically include haul routes associated with aggregate extraction operations. He submitted that Lippa will be the Party that may raise overlapping evidence between their Appeal and the TMLOP Appeals. SLCO has a direct interest in the impact of the policies within the TMLOP that impact on their lake.

*Oakville Factor 5 (Multiplicity of Proceedings)*

[32] Mr. Donnelly submitted that Factor 5 does not apply in this situation.

*Oakville Factor 6 (Historical Background)*

[33] SLCO published a Stewardship Plan in 2014 that was adopted by SLCO as a directive to protect the watershed and establish strategic goals to implement policies within the Township, including the new TMLOP.

[34] Mr. Donnelly referred the Tribunal to a decision issued on July 20, 2021, under Case No. PL200219, that commencing at paragraph 11 describes a party to a proceeding that was the subject of a Settlement, and in which the status of a ratepayer's organization was challenged. The Tribunal ruled that the ratepayer's organization should maintain their status and directed the specific terms of their continued involvement in the proceedings. Mr. Donnelly submitted that this decision is directly applicable to the question before the Tribunal.

[35] Mr. Donnelly explained that SLCO's issues relate to Township-wide policies relating to haul routes for aggregate operations and setbacks for aggregate operations. SLCO intends to call evidence regarding these issues, unless it is duplicative.

[36] Mr. Veldboom advised that the Township supports the request for Party status from SLCO for the reasons previously stated in support of the previous requests. Ms. Savini advised that the District supports the request for status and requested that the added Parties provide their issues lists as soon as possible.

[37] Mr. Ewart confirmed that the Lippa appeal, with respect to the proposed aggregate pit operation, is ongoing. He requested that any issues of SLCO be limited to

those issues not identified by the Township or the District and requested that the SLCO issues be identified, such that their involvement can be limited to those issues only.

[38] Mr. Kemerer submitted that SLCO must “shelter” under those issues identified by the Appellants and that SLCO can not raise new issues as provided for by the Rules. He continued, contending that the District and the Municipality will be defending the identified policies contained within the TMLOP which are subject to the Appeals and therefore protecting the public interest. SLCO has other site-specific appeals and their interests, outside of the interests identified in this matter, can be appropriately addressed through that proceeding. The public interest and their private interests will be addressed. He concluded that MPL, MSA, and Carr oppose granting Party status to SLCO.

[39] Similar to the reasons set out earlier in this Decision, the Tribunal is satisfied that the request for Party status by SLCO meets the requirements of ss. 17(44.1) and (44.2) of the Act. The grounds cited are reasonable, and the Tribunal finds that the representation of the Parties by experienced counsel capable of avoiding duplication of argument and evidence at the Merit Hearing is sufficient to ensure a fair, just, and expeditious hearing. Further, consideration of the Oakville Factors supports the request for Party status.

### **Ross Earl Party Status Request**

[40] Tom Newman attended on behalf of Ross Earl in support of his request for Party status. Mr. Newman advised that he adopts the submissions of Mr. Donnelly and requested that they be applied to Mr. Earl’s request. Mr. Newman advised that Mr. Earl is a permanent resident of the Township, residing on Lambert’s Lake, and has an interest in the policies applying to aggregate extraction in the Township. His concerns relate to air quality and the setbacks of aggregate pits from residential properties and lakes. Mr. Earl intends to call evidence addressing air quality, if necessary.

[41] Mr. Veldboom advised that the Township supports the request of Mr. Earl and notes the limited scope of his interest.

[42] Ms. Savini advised that the District supports the request of Mr. Earl and similarly notes the limited scope of interest identified.

[43] Mr. Ewart submitted that the issue identified will be addressed by the Township and/or the District and adding another witness will not assist the Tribunal in adjudicating the issue. Lippa opposes the request to add Mr. Earl as a Party to these proceedings.

[44] Mr. Kemerer submitted that the issues identified by Mr. Newman are site-specific, and appropriately dealt with through the processes relating to those site-specific applications and/or appeals. Mr. Kemerer suggested that granting Mr. Earl Participant status is more appropriate.

[45] The Tribunal was not provided evidence, written or oral, establishing that Mr. Earl made written or oral submissions to the Township Council prior to its approval of the TMLOP. Section 17(44.1) of the Act sets out the conditions on the restrictions for adding parties to a proceeding and directs the reader to s. 17(44.2) of the Act.

Section 17(44.2) 1. states: "Before the plan was adopted, the person or public body made oral submissions at a public meeting or written submissions to the council."

Section 17(44.2) 2. states: "The Tribunal is of the opinion that there are reasonable grounds to add the person or public body as a party." The Tribunal, having reviewed the reasons set out in Exhibit 6 and the submissions of Mr. Newman, finds that the grounds proffered do not establish that Mr. Earl's presence is necessary to enable the Tribunal to adjudicate effectively and completely on the issue he has identified with respect to the proceeding. The Tribunal finds that the issues are site-specific and accepts the position of the Appellants that the Township and the District will address the Township-wide policies in their submissions at the Merit Hearing.

[46] Should Mr. Earl wish to seek Participant status, a request should be filed with the Tribunal prior to the next CMC for consideration by the presiding Member.

### **Erin Dixon Party Status Request**

[47] Erin Dixon requested Party status before the Tribunal for these proceedings. She advised the Tribunal that she is a member of the SLCO and has Indigenous heritage. Ms. Dixon expressed concerns with the Township's handling of her submissions relating to this matter. Ms. Dixon explained that she proposes to speak to the views of the Council members with respect to the TMLOP. Ms. Dixon referred the Tribunal to a report by the Ontario Professional Planners Institute addressing Indigenous communities' involvement in the land use planning process. It is her desire to bring these issues to the Tribunal and give voice to these concerns.

[48] Ms. Dixon advised that she has a personal interest as the TMLOP will impact her home, and she also has a collective interest in a property as it relates to constitutional rights in Provincial legislation. She advised that she will bring historical knowledge to address the impacts of the TMLOP.

[49] The Township and the District took no position with the request by Ms. Dixon.

[50] Mr. Ewart responded that no land-use planning grounds were identified by Ms. Dixon in her written or oral submissions. His client opposes the request for Party status and advised that in the alternative, Lippa does not object to granting Participant status to Ms. Dixon.

[51] Mr. Kemerer advised that his clients oppose the request by Ms. Dixon. He suggested that the nature of the issues raised by Ms. Dixon would be appropriately addressed as a Participant in these proceedings.

[52] The Member engaged Ms. Dixon in a discussion with respect to the role, responsibilities, and expectations of a Party in a proceeding before the Tribunal. Having reviewed the Party Status Request Form (Exhibit 7), the Member expressed concerns with the information submitted, in that he is unable to ascertain what specific concerns with the TMLOP Ms. Dixon might address should she be granted Party status. Ms. Dixon advised that she would accept status as a Participant in these proceedings as she could then share her traditional Indigenous knowledge with the Tribunal.

[53] The Tribunal acknowledged the importance of the Indigenous voices being heard and determined that this can be achieved through status as a Participant in this matter. The issues raised by Ms. Dixon are not specific to the matter before the Tribunal and the Tribunal finds that her involvement as a Party in these proceedings will not assist in the effective adjudication of the issues in the proceedings. Ms. Dixon is encouraged to continue to participate in the land use planning process and work with each level of government to ensure that the Indigenous community has a voice in the creation of policies affecting land use in the Province.

### **Christine Condry Participant Status Request**

[54] The request for Participant status received from Christine Condry was not determined at the Hearing as Ms. Condry was not in attendance. The Tribunal received correspondence from Ms. Condry after the conclusion of the CMC explaining that she was experiencing technical difficulties and was not able to respond at the CMC when called. The Tribunal will consider the request for status from Ms. Condry at the next CMC.

### **NEXT STEPS**

[55] The Tribunal schedules a second CMC to be held on **Wednesday, September 11, 2024, at 10 a.m.** by Video Hearing.

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

**GoToMeeting:** <https://global.gotomeeting.com/join/687587165>

**Access Code:** 687-587-165

[57] 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://global.gotomeeting.com/join/687587165) or a web application is available:

<https://app.gotomeeting.com/home.html>

[58] 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 an audio-only telephone line: **(Toll-Free) 1-888-299-1889 or +1 (647) 497-9373**. **The access code is as indicated above.**

[59] 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.

[60] The Parties were advised of the hearing date for the next CMC during the CMC, and therefore, no further notice of these proceedings is required.

[61] The Tribunal, having identified the Parties, directs that a draft Procedural Order and Issues List be provided to the Tribunal on or before **Wednesday, September 4, 2024**.

**ORDER**

[62] **THE TRIBUNAL ORDERS** that the following are granted Party status in these proceedings:

1. Friends of Muskoka;
2. Leonard Lake Stakeholders Association;
3. Muskoka Lakes Association; and
4. Skeleton Lake Cottagers Organization Inc.

[63] **THE TRIBUNAL ORDERS** that Erin Dixon is granted Participant status.

[64] **THE TRIBUNAL ORDERS** the directions set out in this decision.

*“David Brown”*

DAVID BROWN  
MEMBER

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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