

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: September 18, 2020

CASE NO(S): PL161306
PL190106

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Dig-Con International Limited
Subject: By-law No. 2016-100
Municipality: Town of Caledon
LPAT Case No.: PL161306
LPAT File No.: PL161306
LPAT Case Name: Dig-Con International Limited v. Caledon (Town)

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

Applicant and Appellant: MJJJ Developments Inc.
Subject: Request to amend the Official Plan - Refusal of request by Town of Caledon
Existing Designation: Prestige Industrial
Proposed Designated: Prestige Industrial Exception
Purpose: To permit an unenclosed hot mix Asphalt plant
Accessory Open Storage
Property Address/Description: Part of Lot 3, Concession 6
Municipality: Town of Caledon
Approval Authority File No.: POPA 19-02
OMB Case No.: PL190106
OMB File No.: PL190106
OMB Case Name: MJJJ Developments Inc. v. Caledon (Town)

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

Applicant and Appellant:	MJJJ Developments Inc.
Subject:	Application amend Zoning By-law No. 2006-50 - Refusal of Application by Town of Caledon
Existing Zoning:	Agricultural (A1)
Proposed Zoning:	Site specific Prestige Industrial (MP-X)
Purpose:	To permit an unenclosed Asphalt plant and Accessory Open Storage
Property Address/Description:	Part of Lot 3, Concession 6
Municipality:	Town of Caledon
Municipality File No.:	RZ 18-04
OMB Case No.:	PL190106
OMB File No.:	PL190107

Heard: September 11, 2020 by video hearing (“VH”)

APPEARANCES:

Parties

MJJJ Developments Inc.
Dig-Con International Limited

Town of Caledon

Regional Municipality of Peel

Mars Canada Inc.

Ontari Holdings Ltd.
BoltCol Holdings South Inc.
BoltCol Holdings North Inc.

Counsel

J. Meader

C. Barnett and E. Barz

R. Godley

J. Cole (and S. Rosenthal in absentia)

J. P. Patterson, P. Morley and L. English

**MEMORANDUM OF ORAL DECISION DELIVERED BY MARGOT BALLAGH ON
SEPTEMBER 11, 2020 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This Decision and Order results from the third Case Management Conference (“CMC”) on the appeals in Tribunal case File No. PL190106 by MJJJ Developments Inc. (the “Appellant”) of the decisions of the Town of Caledon (the “Town”) to refuse the Appellant’s applications to amend the Town’s Official Plan (“OP”) pursuant to s. 22(7) of the *Planning Act* (the “Act”) and to amend the zoning by-law pursuant to s. 34(11) of the Act in order to permit the Appellant to pursue proposed development on the property known municipally as 12415 Coleraine Drive (the “subject lands”).

[2] This Decision and Order also results from the first CMC in Tribunal case File No. PL161306, which was held concurrently, and in which a related company, Dig-Con International Limited (“Dig-Con”), appealed the Town’s decision to adopt Zoning By-law No. BL-2016-100. By way of background, on April 25, 2018, the Tribunal had issued a decision for PL161306 in which the Town’s Zoning By-law Amendment No. BL-2016-100 was approved subject to the site-specific appeal by Dig-Con related to 12415 Coleraine Drive (the subject lands in PL190106) and without prejudice to a future application for the development of an asphalt plant.

[3] The Parties were represented at the CMCs by counsel as noted.

[4] The following Participants in File No. PL190106 attended the CMCs: Sherry Brioschi and Herbert Lozano.

[5] There were no new requests for either party or participant status at the CMCs.

[6] There were no other observers.

[7] Town Counsel, Mr. Barnett confirmed that notice was given for the first CMC in File No. PL161306, and the requisite Affidavit of Service sworn August 20, 2020 had been filed with the Tribunal.

Consolidation Request

[8] As discussed at the previous CMC in PL190106, Counsel felt that it would be pragmatic to consolidate the related files PL190106 and PL161306. The Tribunal had deferred the consolidation request until a first CMC could be convened for PL161306 to address any new party requests and positions on consolidation. As there were no new requests for party status at the first CMC for PL161306, as indicated above, Appellant Counsel, Ms. Meader, requested the Tribunal now make an order on consent of the other parties pursuant to Rule 16.2 to consolidate PL190106 and PL161306.

[9] Given the overlap of parties and counsel in both proceedings, and given that both proceedings relate to the same subject lands and given that both raise the same main issue, being what is the proper zoning for the subject lands, and given there was no objection by any of the other parties, the Tribunal ordered that the proceedings in PL190106 and PL161306 be consolidated pursuant to Rule 16.2 of the Tribunal's *Rules of Practice and Procedure* (the "Rules") with the effect that:

- (a) statutory procedural requirements for any of the original separate proceedings apply, where appropriate, to the consolidated proceeding;
- (b) parties to each of the original separate proceedings are parties to the consolidated proceeding; and
- (c) evidence to be presented in each of the separate proceedings is evidence in the consolidated proceeding.

The draft Procedural Order ("PO")

[10] The Tribunal thanked Ms. Meader for implementing the revisions discussed at the last CMC to the draft PO. Although all the Parties had consented to the terms in the

draft PO, the Tribunal had decided to defer approval until the first CMC for PL161306 could be convened.

[11] The Tribunal told the parties that, after reviewing the terms of the latest draft PO in detail, the Tribunal was not yet in a position to make the Confidentiality Order anticipated by the terms of the draft PO. The Tribunal reviewed the test for the Tribunal to make such an Order as set out in s. 33(3) of the *Local Planning Appeal Tribunal Act* (“LPATA”) and in Rule 22.2 of the Rules, noting that the Tribunal must be of the opinion that “matters involving public security may be disclosed”; or “the document contains information regarding intimate financial or personal matters”; or “other matters that are of such a nature that the public interest or the interest of the person affected outweighs the desirability of adhering to the principle that documents filed in a proceeding be available to the public.”

[12] The Tribunal noted that it must be satisfied that the aforementioned test for a Confidentiality Order has been met before it can warrant deviation from the default of the Open Court Principle and the administrative challenges such an Order could create for the Tribunal.

[13] The Tribunal made its own determination pursuant to Rule 10.3 that, if the Appellant sought a Confidentiality Order as contemplated in the draft PO, the Appellant shall serve a Notice of Written Motion, with supporting authorities, no later than **Wednesday October 28, 2020** to address why such an Order is appropriate in this case. Parties wishing to respond to the written motion shall serve a response no later than **Wednesday November 4, 2020**. The Appellant may reply to the response, if necessary, no later than **Monday November 9, 2020**.

[14] Given the stated concerns relating to confidentiality, the motion materials should be filed under seal; however, the decision on the motion will be publicly accessible.

[15] The Tribunal will hear the written motion on **Tuesday November 10, 2020** or as soon after that day as possible.

[16] In arriving at the dates for the Motion related to the request for a Confidentiality Order, the Tribunal listened to concerns by various Parties regarding the timing of other procedural steps in light of the uncertainty of an eventual Confidentiality Order. In particular, the Appellant raised the concern that the Motion should not be brought until after all the Parties had exchanged their noise, vibration and air quality modelling. After lengthy discussion, the Parties consented to the dates for the motion as set out in paragraph [13] above and also to the revised dates in the draft PO as follows:

- All Parties to exchange Noise, Vibration and Air Quality Modelling no later than **October 26, 2020**
- Expert Witness Meetings no later than **November 12, 2020**
- Witness and Expert Witness Statements no later than **November 27, 2020**
- Reply Witness Statements no later than **January 8, 2021**
- Hearing Plan no later than **January 15, 2021**.

[17] The Tribunal directs Ms. Meader to implement the revised dates in the draft PO and to provide a copy of the latest version of the draft PO to all the other Parties, to the Tribunal case coordinator, and to the Participants.

[18] The Parties confirmed that prospects for productive mediation in these appeals were poor given the binary nature of the positions.

[19] At the request of Ms. Meader, and on consent of the other Parties, the Tribunal scheduled a further CMC for **Friday October 23, 2020 at 10a.m.** by VH

[1] Parties and Participants are to participate with video and audio enabled. Join the event from a computer, tablet or smartphone **by using this link:**

<https://global.gotomeeting.com/join/976253213>. When prompted, **enter the code**

976-253-213 to be connected to the hearing by video.

[2] Observers are to participate with audio only enabled. Join the event via telephone conference **by calling: (647) 497 9373 or Toll Free 1 888 299 1889**. When prompted, **enter the code 976-253-213** to be connected to the call.

[20] Individuals are directed to connect to the event on the assigned date approximately 15 minutes prior to the start of the hearing. It is the responsibility of the persons participating in the appeal hearing by video 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.

[21] The purposes of the next CMC include, but are not limited to, the following:

- To hear a possible motion by the Appellant for production;
- To receive an update from the Town as to the ability to host an in-person hearing in these proceedings in February 2021 as previously scheduled in light of the evolving COVID-19 Pandemic restrictions related to public health and safety; and
- To address other procedural issues that may arise.

[22] A copy of this Memorandum of Oral Decision and Order shall be provided to all Parties and to the Participants.

[23] There will be no further notice.

[24] The Member is not seized.

[25] This is the Order of the Tribunal.

"Margot Ballagh"

MARGOT BALLAGH
MEMBER

If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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