

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: June 09, 2021

CASE NO(S): PL200619

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

Applicant and Appellant: 2107401 Ontario Inc. et. al.
Subject: Request to amend the Official Plan - Failure of the Municipality of Port Hope to adopt the requested amendment
Existing Designation: Low Density Residential
Proposed Designated: Medium Density Residential, Low Density Residential-Urban
Purpose: To permit the development of 369 dwelling units
Property Address/Description: Various Locations
Municipality: Municipality of Port Hope
Approval Authority File No.: OP01-2019
LPAT Case No.: PL200619
LPAT File No.: PL200619
LPAT Case Name: 2107401 Ontario Inc. et. al. v. Port Hope (Mun.)

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

Applicant and Appellant: 2107401 Ontario Inc. et. al.
Subject: Proposed Plan of Subdivision - Failure of the Municipality of Port Hope to make a decision
Purpose: To permit the development of 369 dwelling units
Property Address/Description: Various Locations
Municipality: Municipality of Port Hope
Municipality File No.: SU01-2019
LPAT Case No.: PL200619
LPAT File No.: PL200621

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

Applicant and Appellant:	2107401 Ontario Inc. et. al.
Subject:	Application to amend Zoning By-law No. 20/2010 - Refusal or neglect of the Municipality of Port Hope to make a decision
Existing Zoning:	RES4(28)(H1), RES3(47)(H1), RES3(48)(H1), 'RES3(115), RES1-1(H1)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the development of 369 dwelling units
Property Address/Description:	Various Locations
Municipality:	Municipality of Port Hope
Municipality File No.:	ZB06-2019
LPAT Case No.:	PL200619
LPAT File No.:	PL200620

Heard: May 28, 2021 by Video Hearing ("VH")

APPEARANCES:

Parties

Counsel*/Representative

2107 Ontario Inc. et al
("Applicant")

P. DeMelo*

Municipality of Port Hope
("Municipality")

W. Fairbrother*

Jeremy Holmes/Dianne Despot

Self-represented

MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON MAY 28, 2021 AND INTERIM ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The Tribunal held a Case Management Conference ("CMC") with regard to a development proposal for the lands known locally as Phase 5 of the Lakeside Village Development ("Subject Lands") which proposal sought an Official Plan Amendment

("OPA"), a Zoning By-law Amendment ("ZBA") and a Draft Plan of Subdivision ("Draft Plan").

[2] The development proposal was appealed to the Tribunal due to the failure of the Municipality to deal with the matters within the statutory time frames.

[3] At the CMC, the Tribunal dealt with all the matters required by s. 33(1) of the *Local Planning Appeal Tribunal Act, 2017*, including: hearing a request for party status, hearing requests for participant status, being advised that the Applicant and the Municipality had entered into Minutes of Settlement that proposed to phase the appeal process whereby Phase 1 would exclude from consideration of a woodlot known as Block 272, and Phase 2 would deal with Block 272 but Phase 2 was requested to be adjourned *sine die* to enable further studies to be completed, hearing *viva voce* evidence from the Applicant's land use planner and the Municipality's land use planner on Phase 1, and allowing the appeal in part, with regard to Phase 1, and adjourning Phase 2 *sine die* with directions concerning a status update on Phase 2 and directions with regard to public notice when Phase 2 comes back to the Tribunal, all for the reasons set out below.

DECISION

[4] The Applicant had made a development proposal to the Municipality with regard to the Subject Lands. As the Municipality had not dealt with the development proposal within the statutory time frames, the Applicant appealed all of the Subject Lands to the Tribunal.

[5] Of note is the fact that, there is a contested woodland on the Subject Lands ("Block 272").

[6] Contained within the public notice of the hearing, the Applicant had provided its position that at the CMC, it would be asking the Tribunal to phase the hearing such that

the contested Block 272 would be excluded from consideration in Phase 1, and that it would be considered in Phase 2, which Phase 2 they would request be adjourned *sine die*.

[7] In the lead up to the hearing, the Applicant and the Municipality entered into Minutes of Settlement based on such a phased approach, and whereby the Municipality and the Applicant had come to agreement on the OPA, the ZBA, the Draft Plan, and the Conditions of Draft Plan Approval for Phase 1.

[8] The Tribunal granted party status to Jeremy Holmes and Dianne Despot for Phase 2, and the Tribunal granted participant status to the participants as found on Attachment 1 and appended to this Decision, and specifically included Jane Zednik, whose request for participant status was not before the Tribunal at the hearing, but is now entered as Exhibit 4 P.

[9] At the CMC, the Tribunal canvassed those seeking either party or participant status and virtually all had interest in Block 272 and Phase 2, and the one participant who had interest in Phase 1, was satisfied with the draft conditions that were found in the Minutes of Settlement.

[10] With no party objecting and no participant opposed to the settlement reached between the Applicant and the Municipality, the Tribunal sought submissions from counsel for the Applicant and the Municipality on Rule 19.06 from the Tribunal's Rules of Practice and Procedure, (which provides the Tribunal with the authority to convert a CMC to a settlement hearing).

[11] Counsel were of the view that in the absence of any party objecting, that the Tribunal had the authority to convert the CMC to a settlement hearing, which the Tribunal did.

[12] The Tribunal then heard *viva voce* evidence from Robert Dragicevic, land use planner for the Applicant, and from Theodhora Merepeza, Planning Manager for the Municipality.

[13] The Tribunal posed two sets of questions to these witnesses: first would the consideration of Phase 2 be prejudiced if the Tribunal were to proceed and to hear the settlement on Phase 1, and if there were no prejudice, secondly what were their expert opinions concerning to the statutory tests for the planning instruments in Phase 1?

[14] Concerning the proposed phasing of the hearing process, both land use planners opined that there would be no prejudice to the consideration of Phase 2 by proceeding with the settlement on Phase 1. The planners noted that not only is the woodlot excluded from Phase 1 but also a buffer area of 120 metres beyond the edge of the woodlot.

[15] With regard to the land use planning instruments, Mr. Dragicevic noted that the Draft Plan had been recently revised with regard to lot 138 resulting from transportation comments and that a revised configuration had been agreed upon with the Municipality, and the revised Draft Plan would be provided to the Tribunal. With regard to the OPA, ZBA, and Conditions of Draft Plan Approval, they remained the same as set out in the Minutes of Settlement.

[16] Addressing the statutory tests for the revised Draft Plan, the OPA, the ZBA, and the Conditions of Draft Plan Approval, both Mr. Dragicevic and Ms. Merepeza opined that:

- a. They had appropriate regard to the matters of Provincial Interest as found in s. 2 of the *Planning Act* ("PA");
- b. They had appropriate regard for the decision of the Municipality's Council as reflected in the Minutes of Settlement;

- c. They were consistent with the Provincial Policy Statement 2020 (“PPS”);
- d. They conformed to A Place to Grow: The Growth Plan for the Greater Golden Horseshoe, as amended 2020 (“Growth Plan”);
- e. They conformed to the County Official Plan;
- f. They conformed to the intent and purpose of the local Official Plan;
- g. The ZBA standards and regulations implemented the OPA;
- h. The Draft Plan satisfied all the criteria found in s. 51(24) of the PA;
- i. The Conditions of Draft Plan Approval were reasonable and appropriate for the development of the Phase 1 lands;
- j. The proposed planning instruments represented good planning;
- k. Approval of the Phase 1 planning instruments would be in the public interest; and
- l. It would be appropriate if the Tribunal were to delegate authority to the Municipality to clear the Conditions of Draft Plan Approval pursuant to s. 51(56.1) of the PA.

[17] Having read the affidavit of Mr. Dragicevic, and having read the March 5, 2020 and June 16, 2020 reports to Council of the Municipality by Ms. Merepeza, having heard the *viva voce* evidence of both Mr. Dragicevic and Ms. Merepeza, and having heard the submissions of counsel, the Tribunal allowed the appeals in part, approved the Draft Plan in principle subject to receiving the final version of the Draft Plan (lot 138),

approved the OPA, approved the ZBA, and approved the Conditions of Draft Plan Approval all as set out in the Minutes of Settlement found in Exhibit 1 Appendix F.

[18] The Tribunal finds that a phased approach is appropriate in these circumstances, as it separates the contested woodlot (and buffer) as found in Block 272 from the balance of the Subject Lands and does not prejudice the consideration of Block 272 at a later date.

[19] With regard to the Phase 1 lands, the Tribunal has the uncontested and uncontroverted expert land use planning evidence of the Applicant's planner and the Municipality's planner that all the statutory tests have been met as the Phase 1 development proposal represents intensification that will contribute to the supply and range of housing within the Municipality, uses existing and planned service in the area, is within walkable proximity to existing transit.

[20] Accordingly, the Tribunal will:

- a. Allow the appeals in part;
- b. Will approve in principle the Draft Plan as found in the Minutes of Settlement in Exhibit 1 Appendix F;
- c. Will approve the OPA as found in the Minutes of Settlement in Exhibit 1 Appendix F;
- d. Will approve the ZBA as found in the Minutes of Settlement in Exhibit 1 Appendix F;
- e. Will approve the Conditions of Draft Plan Approval as found in the Minutes of Settlement in Exhibit 1 Appendix F;

- f. Pursuant to s. 51(56.1) of the PA, delegate authority to the Municipality for the clearing of the Draft Plan Conditions of Approval relating to Phase 1; and
- g. Adjourn Phase 2 of the hearing *sine die*.

[21] Additionally, with regard to Phase 2, the Tribunal provides these directions.

[22] Jeremy Holmes and Dianne Despot are parties to the consideration of Phase 2.

[23] All of the participants noted on Attachment 1, that is appended to this Decision, are granted participant status for Phase 2.

[24] Counsel for the Applicant, within six months of the issuance date of this Decision, shall provide a status update to the Tribunal and be copied to counsel for the Municipality.

[25] Counsel for the Municipality will cause that status update to be posted on the Municipality's website so that the public may be apprised of the status of the matter.

[26] For Phase 2 of this Hearing, the Applicant may request that Phase 2 be brought back on before the Tribunal, but the Applicant shall, at its sole expense, provide a fresh public notice with at least 60 days notice to the parties listed here, and to PHorests 4R PHuture Community Association Inc. (see Exhibits 3A, 3B, and 3C), to the participants listed on Attachment 1 to this Decision, and, as otherwise, required by the Tribunal.

[27] Attachment 1 is appended to and forms part of this Decision.

[28] I am not seized of Phase 2.

[29] Scheduling permitting, I may be spoken to for case management purposes.

[30] This is the Interim Order of the Tribunal.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER

Ontario Land Tribunal

Website: 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.

ATTACHMENT 1

PARTICIPANTS

EXHIBIT 4:

- A Architectural Conservancy of Ontario, Port Hope Branch
- B Williams Port Condominium Board
- C David Elliott
- D Glen Keilder and Jennifer Cooper
- E Wayne Johnson
- F Shannon Linton
- G Ian McCrae
- H Carole Payne
- I Lisa Poirier
- J Joachim Schmeiss
- K Christopher Terry
- L Suzanne Stickley
- M Lance Gifford*
- N Janette Johnston*
- O Laura Steen*
- P Jane Zednik

* Page 2 of the Participant Status Request Form is missing.