

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: February 17, 2022

CASE NO(S):

OLT-21-001864
(formally
PL190354)

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

Appellant: Queen's Court Development Ltd.
Subject: Proposed Official Plan Amendment No. PT OP-1801
Municipality: Town of Penetanguishene
OLT Case No.: PL190354
OLT File No.: PL190354
OLT Case Name: Queens Court Developments Limited v. Penetanguishene (Town)

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

Applicant and Appellant: Queens Court Developments Limited
Subject: Application amend Zoning By-law No. 2000-02 - Refusal of Application by Town of Penetanguishene
Existing Zoning: Deferred Development (D)
Proposed Zoning: Site Specific zone exception within the Residential Third Density (R3) zone, to zone the future Medium Density Block into a Residential Third Density (R3) zone subject to a Holding "H" Provision, the Woodlot and Storm Water Management Pond is requested to be zoned to Open Space (OS) and the significant slope at the rear of the single detached dwelling lots would be zoned Environmental Protection (EP) Zone
Purpose: To permit a proposed Plan of Subdivision
Property Address/Description: Part of Lots 104 to 113 et al
Municipality: Town of Penetanguishene
Municipality File No.: Z.A. 8/2015
OLT Case No.: PL180487

OLT File No.: PL180487

PROCEEDING COMMENCED UNDER subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Queens Court Developments Limited
Subject:	Proposed Plan of Subdivision
Property Address/Description:	Part of Lots 104 to 113 et al
Municipality:	Town of Penetanguishene
Municipal File No.:	PEN-SUB-2013-01
OLT Case No.:	PL180487
OLT File No.:	PL180488

Heard: January 21, 2022 via Video Hearing

APPEARANCES:

Parties

Counsel*/Representative

Queen's Court Developments Limited ("Appellant")

Sharmini Mahadevan

Town of Penetanguishene ("Town")

Alexandra Whyte, (Quinto Annibale, and Brendan Ruddick, in absentia)

County of Simcoe ("County")

Marshall Green

MEMORANDUM OF ORAL DECISION DELIVERED BY ANTHONY CORNACCHIA ON JANUARY 21, 2022 AND ORDER OF THE TRIBUNAL

[1] This Case Management Conference ("CMC") dealt with the draft procedural order relating to the Appeal of the new Official Plan for the Town (PL190354). The Appellant has withdrawn its appeal of the refusal by the Town to approve a rezoning application and the corresponding draft plan of subdivision for lands known municipally as 221 Fox Street (PL180488).

[2] The parties are in discussions regarding a new rezoning application and corresponding draft plan of subdivision application for the Subject Property and provided the Tribunal with an update. A public consultation process was held, and the

Appellant is working on revisions to the plan of subdivision and design in response to the public consultation. The Appellant hopes to file a new rezoning application and corresponding revised draft plan of subdivision application prior to the next CMC and requested that a new CMC be granted to identify any outstanding issues from this process. The request for a new CMC was granted.

[3] The Tribunal reviewed the draft Procedural Order attached as Attachment 1 to this Decision with counsel. All counsel supported the draft Procedural Order and the Tribunal approved it.

[4] THE TRIBUNAL ORDERS that:

1. The Procedural Order attached as Appendix "A" is hereby approved for the **10-day** video hearing commencing on **Tuesday, 11 October 2022 at 10 a.m.** dealing with the merits of the appeal.
2. A further Case Management Conference is scheduled on **Thursday, May 26, 2022 at 10 a.m.** by Video Hearing.
 - a. 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:

<https://global.gotomeeting.com/join/909787981>

Access code: **909-787-981**

- b. 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 or a web application is available: <https://app.gotomeeting.com/home.html>

- c. 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: [+1 \(647\) 497-9391](tel:+16474979391). The access code is **909-787-981**.
 - d. 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 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.
3. There will be no further notice.
 4. The Member is not seized.

"A. Cornacchia"

A. CORNACCHIA
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 ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1



Ontario Land Tribunal

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ISSUE DATE:

CASE NO.: PL190354

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

Appellant: Queen's Court Development Ltd.
Subject: Proposed Official Plan Amendment No. PT OP-1801
Municipality: Town of Penetanguishene
OLT Case No.: PL190354
OLT File No.: PL190354
OLT Case Name: Queen's Court Developments Ltd. v. Penetanguishene (Town)

PROCEDURAL ORDER

1. The Tribunal may vary or add to the directions in this procedural order at any time by an oral ruling or by another written order, either on the parties' request or its own motion.

Organization of the Hearing

2. The video hearing will begin on **Tuesday, 11 October 2022** at 10:00 a.m. at <https://global.gotomeeting.com/join/718988005>.
3. The parties' initial estimation for the length of the hearing is **ten (10) days**. The Tribunal will not sit on Monday, 17 October 2022 and the hearing is expected to conclude on **Tuesday, 25 October 2022**. The parties are expected to cooperate to reduce the length of the hearing by eliminating redundant evidence and attempting to reach settlements on issues where possible. The procedural order deadlines are generally found in **Attachment 1**.
4. The parties and participants identified at the case management conference are set out in **Attachment 2**.
5. The issues are set out in the Issues List attached as **Attachment 3**. There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it. An issue can be removed from the issues list without a formal order of the Tribunal with the consent of all parties.

ATTACHMENT 1

6. The order of evidence shall be as set out in **Attachment 4** to this Order. The Tribunal may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent, subject to the Tribunal's approval, or by Order of the Tribunal.
7. Any person intending to participate in the hearing should provide a mailing address, email address and a telephone number to the Tribunal as soon as possible. Any person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, email address and the phone number as soon as possible.
8. Any person who intends to participate in the hearing, including parties, counsel and witnesses is expected to review the Tribunal's [Video Hearing Guide](#), available on the Tribunal's website.

Requirements Before the Hearing

9. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered on or before **Friday, 12 August 2022** and in accordance with paragraph 23 below. A party who intends to call an expert witness must include a copy of the witness' Curriculum Vitae and the area of expertise in which the witness is prepared to be qualified.
10. Expert witnesses in the same field shall have a meeting on or before **Friday, 9 September 2022** and use best efforts to try to resolve or reduce the issues for the hearing. Following the experts' meeting the parties must prepare and file a Statement of Agreed Facts and Issues with the OLT case-coordinator on or before **Friday, 16 September 2022**.
11. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in paragraph 13 below. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.
12. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence as in paragraph 13 below. A party who intends to call a witness who is not an expert must file a brief outline of the witness' evidence, as in paragraph 13 below.
13. On or before **Friday, 2 September 2022**, the parties shall provide copies of their witness and expert witness statements to the other parties and to the OLT case co-ordinator in accordance with paragraph 23 below.

ATTACHMENT 1

14. On or before **Friday, 2 September 2022**, a participant shall provide copies of their written participant statement to the other parties in accordance with paragraph 23 below. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
15. On or before **Friday, 30 September 2022**, the parties shall provide copies of their visual evidence to all of the other parties in accordance with paragraph 23 below. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
16. Parties may provide to all other parties and the OLT case co-ordinator a written response to any written evidence on or before **Friday, 16 September 2022** in accordance with paragraph 23 below
17. The parties shall prepare a joint document which shall be shared with the OLT case-coordinator on or before **Friday, 23 September 2022**.
18. Any documents which may be used by a party in cross examination of an opposing party's witness shall be password protected and only be accessible to the Tribunal and the other parties if it is introduced as evidence at the hearing, pursuant to the directions provided by the OLT case-coordinator, on or before **Thursday, 6 October 2022**.
19. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. *See Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.*
20. A party who provides written evidence of a witness to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least 7 days before the hearing that the written evidence is not part of their record.
21. On or before **Friday, 2 September 2022**, the parties shall advise the Tribunal whether any of the scheduled hearing dates can be released. For greater certainty, the parties are permitted to request the Tribunal to release any of the scheduled hearing dates following this date.
22. The parties shall prepare and file a hearing plan with the Tribunal on or before **Friday, 23 September 2022** with a proposed schedule for the hearing that identifies, as a minimum, the parties participating in the hearing, the preliminary matters (if any to be addressed), the anticipated order of evidence, the date each witness is expected to attend, the anticipated length of time for evidence to be presented by each witness in chief, cross-examination and re-examination (if any) and the expected length of time for final submissions. The parties are expected to ensure that the hearing proceeds in an efficient manner and in accordance with the hearing plan. The Tribunal may, at its discretion, change or alter the hearing plan at any time in the course of the hearing.

ATTACHMENT 1

23. All filings shall be submitted electronically and in hard copy. Electronic copies may be filed by email, an electronic file sharing service for documents that exceed 10MB in size, or as otherwise directed by the Tribunal. The delivery of documents by email shall be governed by *Rule 7* of the Tribunal's Rules.

24. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

This Member is [not] seized.

So orders the Tribunal.

BEFORE:

Name of Member:

Date:

TRIBUNAL REGISTRAR

ATTACHMENT 1

ATTACHMENT 1

SUMMARY OF DATES

DATE	EVENT
Friday, 12 August 2022	Exchange of witness lists (names, disciplines and order to be called)
Friday, 2 September 2022	Exchange of witness statements, summonsed witness outlines, expert reports and participant statements
Friday, 2 September 2022	Parties to advise Tribunal if any hearing dates can be released
Friday, 9 September 2022	Experts meeting prior to this date
Friday, 16 September 2022	File Statement of Agreed Facts and Issues
Friday, 16 September 2022	Exchange of response to witness statements (if any)
Friday, 23 September 2022	File hearing plan with the Tribunal
Friday, 23 September 2022	Provide joint document book to the Tribunal
Friday, 30 September 2022	File visual evidence (if any)
Tuesday, 11 October 2022	Hearing commences

ATTACHMENT 1

ATTACHMENT 2

Parties

Town of Penetanguishene

Mr. Quinto Annibale / Mr. Brendan Ruddick
Loopstra Nixon LLP
135 Queens Plate Drive, Suite 600
Toronto, Ontario M9W 6V7

Tel: 416-748-4757 / 416-748-5126

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County of Simcoe

Mr. Marshall Green

Legal Services Department
County of Simcoe
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Queen's Court Developments Ltd.

Ms. Johanna Shapira / Ms. Sharmini Mahadevan
Wood Bull LLP
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Toronto, Ontario M5H 2M5

Tel: 416-203-5631 / 416-203-7345

Email: jshapira@woodbull.ca / smahadevan@woodbull.ca

ATTACHMENT 1

ATTCHMENT 3

ISSUES LIST

The identification of an issue does not mean that all parties agree that such issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the matters before the Hearing Officer(s). The extent to which these issues are appropriate or relevant to the determination of the Hearing Officer(s) at the hearing will be a matter of evidence and argument at the hearing.

1. a. Is it appropriate for Schedule B-1 of the new Official Plan (the “Official Plan”) to include an *Environmental Protection* policy overlay on the lands located at 221 Fox Street (the “Subject Property”)?

b. Is the *Environmental Protection* policy overlay in keeping with Policies 3.7, 3.10, 3.10.6 and 3.10.8 of the Official Plan for the Subject Lands?
2. Is the *Environmental Protection* policy overlay consistent with Policy 2.1 of the *Provincial Policy Statement, 2020* (the “PPS”)?
3. Does the *Environmental Protection* policy overlay conform with Policy 4.2.2 of the *Growth Plan for the Greater Golden Horseshoe 2019*, as amended (the “Growth Plan”)?
4. Does the *Environmental Protection* policy overlay conform with the County of Simcoe Official Plan (the “County Official Plan”) that designates the Subject Property as *Settlements*?
5. Should Schedule C and Section 5.2 of the Official Plan provide for a future road extension on the lands subject to the appeal when no other future roads are shown in the Official Plan?
6. If the answer to Issue 5 is yes, would the inclusion of the said future road in the Official Plan be consistent with Policies 1.1.1, 1.1.3.2, 1.1.3.6 and 4.6 of the PPS?
7. If the answer to Issue 5 is yes, would the inclusion of the said future road in the Official Plan conform with Policies 2.2.1.2 a), 3.2.2.2 and 3.2.3.2 of the Growth Plan?
8. If the answer to Issue 5 is yes, would the inclusion of the said future road in the Official Plan conform with Policies 3.1.1, 3.2.3, 3.2.13, 4.8.7, 4.8.10 and 4.8.12 of the County Official Plan?

ATTACHMENT 1

ATTACHMENT 4

ORDER OF EVIDENCE

1. Queen's Court Developments Ltd
2. Town of Penetanguishene
3. County of Simcoe
4. Reply by Queen's Court Developments Ltd, if any

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