

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: August 25, 2023

CASE NO(S): OLT-23-000354

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

Applicant/Appellant	Dewdney Mountain Farms Limited
Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description:	ZBL to permit a quarry use and associated uses on the subject lands
Reference Number:	ZBA 20-14
Property Address:	543 Ledge Road
Municipality/UT:	Municipality of Trent Lakes
OLT Case No:	OLT-23-000354
OLT Case Name:	Dewdney Mountain Farms Limited v. Trent Lakes (Municipality)

Heard: August 18, 2023 by video hearing

APPEARANCES:

Parties

Counsel/Representative*

Dewdney Mountain Farms Limited	David White
Municipality of Trent Lakes	John Ewart
Trent Lakes Concerned Citizens	Adri Eastman*

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HARDY ON AUGUST 18,
2023 AND ORDER OF THE TRIBUNAL**

INTRODUCTION AND BACKGROUND

[1] This first Case Management Conference (“CMC”) relates to an appeal brought pursuant to s. 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (“Act”) from the failure of the Municipality of Trent Lakes (“Municipality”) to render a decision within the statutory timeframes of the Act with respect to an application for a Zoning By-law Amendment (“ZBA”) to amend the Comprehensive Zoning By-law No. B2014-070. The appeal has been filed by Dewdney Mountain Farms Limited (“Appellant”) regarding its property known municipally as 543 Ledge Road, Municipality of Trent Lakes (“Subject Property”).

[2] The Subject Property has a lot area of approximately 175 hectares with a lot depth of approximately 1,360 metres and frontage on Ledge Road of approximately 1,550 metres.

[3] Counsel for the Appellant provided the Tribunal with a helpful summary of the history relating to the Subject Property.

[4] In 2013, the Municipality adopted an Official Plan Amendment (“OPA 41”) and approved a Zoning By-law Amendment No. B2013-09 (“ZBA B2013-09”) for a proposed quarry operation. OPA 41 and ZBA B2013-09 were appealed to the Tribunal’s predecessor, the Ontario Municipal Board (“OMB”). In 2015, the OMB approved OPA 41 and deferred a decision on ZBA B2013-09.

[5] There were allegations of errors made relating to the ZBA B2013-09 decision, which was re-heard by the OMB and resulted in a further decision upholding the original Order.

[6] In 2016, a motion was filed with the Divisional Court seeking leave to appeal on matters of law relating to the OMB’s adjudication process which resulted in an Order of the Divisional Court granting leave to appeal on four issues. The Divisional Court found

that the “OMB erred by proposing noise mitigation measures without evidence supporting their feasibility” and ruled that the OMB would re-hear that sole issue.

[7] In 2018, the Local Planning Appeal Tribunal (“LPAT”) (successor of OMB) re-heard the issue and allowed the appeal of ZBA B2013-09. In its decision, LPAT made it clear that OPA 41 was not affected by the decision. LPAT further clarified that the decision not to approve ZBA B2013-09 was made without prejudice to the Appellant bringing a future application for a Zoning By-law Amendment.

[8] On July 20, 2020, the Appellant submitted the ZBA application to the Municipality which proposes to rezone the Subject Property to Special Extractive Industrial- _____ Holding (EI-___-H) Zone in order to permit the proposed Quarry Operation use along with ancillary and accessory uses. The Subject Property is currently zoned Rural-55 (RU-55) and Environmental Protection (EP).

[9] The Parties agreed that there is no dispute that OPA 41 is in full force and effect. The Parties further agreed that the ZBA hearing will be a scoped hearing with planning and engineering evidence focused on the noise related to the haul road and the sufficiency of the haul road.

PROCEDURAL MATTERS

[10] The Tribunal confirmed with the Parties that there were no issues with service of Notice for the CMC and as such, no further notice is required. The Tribunal was in receipt of the Affidavit of Service of Jenny Gillegean sworn July 12, 2023, which was marked as Exhibit 1.

SETTLEMENT OPPORTUNITIES

[11] The Parties jointly advised the Tribunal that they had engaged in preliminary discussions and will continue to do so. At this point, the Parties submitted that Tribunal-

led mediation would not be of assistance but were aware of its availability and would contact the Tribunal if required.

REQUESTS FOR STATUS

[12] Prior to the CMC, the Tribunal received one written request for Participant Status from Rebecca Jory and five written requests for Party Status from the following:

- Trent Lakes Concerned Citizens (“TLCC”);
- Neal McCarthy;
- 1000190777 Ontario Inc. (“777”);
- 1000190778 Ontario Inc. (“778”); and
- 1000190781 Ontario Inc. (“781”).

Rebecca Jory

[13] In her written request form, Ms. Jory set out that she resides along the proposed haul road and had concerns related to safety that she would like considered by the Tribunal. With the consent of the Parties, the Tribunal granted Participant Status to Ms. Jory.

TLCC

[14] In its written request form, TLCC noted that it had consulted with legal Counsel who did not feel it was necessary to attend the CMC. TLCC also noted that it seeks Party Status to “...only listen, we will not be providing any information...”. Adri Eastman appeared on behalf of TLCC and in response to questions of the Tribunal confirmed that TLCC was an incorporated entity.

[15] The Tribunal engaged in a discussion with Ms. Eastman in order gauge how TLCC would assist the Tribunal in adjudicating the appeal at a future hearing. The Tribunal provided Ms. Eastman with an explanation of the obligations of a Party, including that a Party must participate fully in the appeal process and noted that Party Status was not appropriate in order to “listen” to the appeal. Ms. Eastman indicated that, at this point, TLCC would be content to observe the proceedings, but may want to have input into the Procedural Order or participate in the proceedings at a later date. The Tribunal explained that Parties are permitted to participate fully in the hearing, not observers, and further that Parties are identified early in the proceeding in order to ensure an efficient and cost-effective process.

[16] Following this discussion, Ms. Eastman changed course and submitted that TLCC would like to maintain their request for Party Status. She submitted that TLCC would formally retain Counsel and call experts and evidence at a future merit hearing. She explained that TLCC had been involved in the prior OPA 41 and ZBA B2013-09 proceedings and had a genuine interest in the current appeal.

[17] The Municipality had no objection to the Party Status request of TLCC. The Appellant submitted that they would reluctantly not object to the Party request however, noted that the request presented at the CMC was very different than that set out in the written request form. Counsel for the Appellant did acknowledge that TLCC had been involved in the proceedings before the OMB and LPAT and that they were familiar with the process.

[18] The Tribunal granted Party Status to TLCC based upon their oral submissions that they would call experts and evidence and participate fully in the appeal. On or before **Monday, October 30, 2023**, the Tribunal directed TLCC to either confirm the name and contact information of retained Counsel or file a Confirmation of Representation form identifying who would be representing TLCC in the proceedings.

Neal McCarthy, 777, 778 and 781

[19] In advance of the CMC, Mr. McCarthy submitted written Party Status request forms in his personal capacity and on behalf of three companies that he owns, specifically, 777, 778 and 781. After hearing the Tribunal's explanation and discussion with Ms. Eastman, Mr. McCarthy clarified that Participant Status would better suit his needs and the needs of 777, 778 and 781. With the consent of the Parties, the Tribunal granted Participant Status to Mr. McCarthy, 777, 778 and 781.

[20] All Participants were reminded by the Tribunal that should they wish their statements to be considered by the presiding Member/Panel at the merit hearing, they are required to submit such statements by the deadline that will be set out in a future Procedural Order that will govern the proceedings.

[21] In response to the Tribunal's inquiry, there were no other persons or entities present at the CMC requesting Party or Participant Status.

NEXT STEPS

[22] Counsel for the Appellant requested that the Tribunal schedule a second CMC in late October 2023 or early November 2023 for the purpose of presenting a draft Procedural Order and Issues List and to set hearing dates for the merit hearing.

[23] Upon hearing the submissions of the Parties, the Tribunal agreed that a second CMC is appropriate to efficiently progress the appeal. In order to ensure that the second CMC is productive, the Tribunal directed the Parties to submit a draft Procedural Order and Issues List to the Tribunal on or before **Monday, October 30, 2023**.

[24] The Tribunal scheduled a second CMC by video hearing commencing at **10 a.m.** on **Friday, November 3, 2023**.

[25] 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/442599157>

Access code: 442-599-157

[26] 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>

[27] 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 1-888-455-1389 or +1 (647) 497-9391**. The **access code** is **indicated above**

[28] 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 CMC 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.

ORDER

[29] **The Tribunal orders** that Rebecca Jory, Neal McCarthy, 100190777 Ontario Inc., 1000190778 Ontario Inc. and 1000190781 Ontario Inc. are Participants in this proceeding.

[30] **The Tribunal orders** that Trent Lakes Concerned Citizens is a Party in this proceeding. The Tribunal directs Trent Lakes Concerned Citizens to circulate the name and contact information of retained Counsel or file a Confirmation of Representation form on or before **Monday, October 30, 2023**.

[31] The Tribunal directs the Parties to submit to the Case Management Coordinator a draft Procedural Order and Issues Lists on or before **Monday, October 30, 2023**.

[32] **The Tribunal orders** that a second Case Management Conference in this matter will be held by video hearing on **Friday, November 3, 2023**, at **10 a.m.**

[33] The Member is not seized, however, will remain available for case management subject to the Tribunal's calendar.

[34] No further notice will be given.

"C. Hardy"

C. HARDY
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.