

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: October 12, 2022

CASE NO(S).: OLT-21-001392

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

Applicant/Appellant: Jannett Nicholson, Richard Nicholson, and 2683894 Ontario Inc.
Subject: Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description: To permit the development of 30 townhouse condominium units
Reference Number: RZ 2021-0001
Property Address: 18314, 18309 Hurontario Street
Municipality/UT: Caledon/Peel
OLT Case No: OLT-21-001392
OLT Lead Case No: OLT-21-001392
OLT Case Name: Nicolson v. Caledon (Town)

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant/Appellant: Jannett Nicholson, Richard Nicholson, and 2683894 Ontario Inc.
Subject: Site Plan
Description: To permit the development of 30 townhouse condominium units
Reference Number: SPA 2021-0001
Property Address: 18314, 18309 Hurontario Street
Municipality/UT: Caledon/Peel
OLT Case No: OLT-21-001394
OLT Lead Case No: OLT-21-001392

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

Applicant/Appellant: Jannett Nicholson, Richard Nicholson, and 2683894 Ontario Inc.
Subject: Proposed Plan of Subdivision – Failure of Approval Authority to make a decision

Description: To permit the development of 30 townhouse condominium units
 Reference Number: 21CDM-21001C
 Property Address: 18314, 18309 Hurontario Street
 Municipality/UT: Caledon/Peel
 OLT Case No: OLT-21-001395
 OLT Lead Case No: OLT-21-001392

Heard: May 20, 2022 and August 5, 2022 by Video Hearing

APPEARANCES:

Parties

Jannett and Richard Nicholson
 and 2683894 Ontario Inc.

Town of Caledon

Region of Peel

Counsel

Steven Ferri

Raj Kehar
 Chantal Deserevilles

Rachel Godley

MEMORANDUM OF ORAL DECISION DELIVERED BY S. BOBKA AND JATINDER BHULLAR ON AUGUST 5, 2022, AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This Case Management Conference (“CMC”) was convened to consider the Appeals by Jannett and Richard Nicholson and 2683894 Ontario Inc. (together the “Applicants”) regarding their property municipally known as 18314 and 18309 Hurontario Street in the Town of Caledon (“Town”). The Applicants filed Zoning By-law Amendment (“ZBA”), Draft Plan of Subdivision (“Draft Plan”) and Site Plan Control (“Site Plan”) applications for which the Town failed to make a decision in the required time period.

[2] A duly executed and sworn Affidavit of Service for the CMC provided by Damneet Bassi and dated April 8, 2022 is on file with the Tribunal and was marked as Exhibit 1.

PARTIES AND PARTICIPANTS

[3] There were two requests for Party Status: the Region of Peel (“Region”) and neighbours Heather and Bruce Craggs.

[4] The Tribunal granted Party Status to the Region for the ZBA and Draft Plan Appeals but requested clarity regarding the suitability/legislative statute of the request for Status to the Site Plan. Upon receiving submissions from the Region and with the consent of the Parties, the Tribunal was satisfied that the Region has an interest in the matter and granted Party Status to the Region in all of the Appeals.

[5] Regarding the request for Party Status from the Craggs, the Tribunal received submissions from Mr. Ferri that the Craggs (through their representative) had been unresponsive despite several attempts to reach out to them. The Tribunal explained to counsel for the Craggs that full participation is expected of anyone granted Party Status. The Tribunal initially granted conditional Party Status to the Craggs to the ZBA Appeal only and directed them to provide an Issues List and Witness List to the other Parties by June 3, 2022. On the second day of this CMC hearing, it was determined that the Craggs had not followed the Tribunal’s direction as they had not established a planning basis for any issues, nor had they provided a list of witnesses by the required deadline. The Tribunal then converted the Craggs’ Status request to that of Participant on the consent of the Parties.

[6] The Tribunal also received requests for Participant Status from Mark White of the Ministry of Transportation (“MTO”), Catherine Hepworth of the Caledon Village Association (“CVA”), Michele Blanchard, and Karen Ridler. As the MTO and Ms. Blanchard did not attend the CMC, their requests for Status were denied by the Tribunal.

[7] Participant Status was granted to Ms. Ridler on the consent of the Parties.

[8] The Tribunal granted Participant Status to the CVA represented by Ms. Hepworth, who confirmed that she had the authority to act on behalf of the association, which she also confirmed was incorporated.

THE CMC

[9] The Tribunal canvassed the Parties for their submissions as to whether the Appeals should be consolidated or heard together. Upon consent of the Parties, the Tribunal, using rule 16.3 of the Ontario Land Tribunal's *Rules of Practice and Procedure*, determined that hearing the matters together would be the most appropriate and efficient way forward.

[10] The Tribunal was provided with a draft Procedural Order ("PO") including a detailed Issues List ("IL") developed on consent by the Parties. The Tribunal directed the Parties to finalize the PO and submit the final draft version to the Case Coordinator by **August 12, 2022**. The PO as approved by the Tribunal is included in this decision as Attachment 1.

[11] The Parties also presented their plans to address the IL through their expert witnesses and requested a 15-day hearing.

[12] The Tribunal orders that a 15-day video hearing is set beginning on **April 3, 2023 at 10:00 a.m.**

[13] Parties 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:

GoTo Meeting: <https://global.gotomeeting.com/join/660145013>

Audio-only telephone line: +1 (647) 497-9373 or (Toll-Free) 1(888) 299-1889

Access code: 660-145-013

[14] 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/660145013) or a web application is available at: <https://app.gotomeeting.com/home.html>

[15] 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, provided above.

[16] 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.

[17] The Participants are instructed to have their written statements submitted to the Tribunal and all Parties on or before the end of day on **January 23, 2023**.

[18] There will be no further notice.

[19] The Panel is not seized.

[20] So orders the Tribunal.

"S. Bobka"

S. BOBKA
MEMBER

"Jatinder Bhullar"

JATINDER BHULLAR
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

655 Bay Street, Suite 1500
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Tribunal ontarien de l'aménagement du territoire

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Site Web: olt.gov.on.ca



CASE NO(S): OLT-21-001392

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Applicant/Appellant:	Jannett Nicholson, Richard Nicholson, and 2683894 Ontario Inc.
Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description:	To permit the development of 30 townhouse condominium units
Reference Number:	RZ 2021-0001
Property Address:	18314, 18309 Hurontario Street
Municipality/UT:	Caledon/Peel
OLT Case No:	OLT-21-001392
OLT Lead Case No:	OLT-21-001392
OLT Case Name:	Nicolson v. Caledon (Town)

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant/Appellant:	Jannett Nicholson, Richard Nicholson, and 2683894 Ontario Inc.
Subject:	Site Plan
Description:	To permit the development of 30 townhouse condominium units
Reference Number:	SPA 2021-0001
Property Address:	18314, 18309 Hurontario Street
Municipality/UT:	Caledon/Peel
OLT Case No:	OLT-21-001394
OLT Lead Case No:	OLT-21-001392

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

Applicant/Appellant: Jannett Nicholson, Richard Nicholson, and 2683894 Ontario Inc.
Subject: Proposed Plan of Subdivision – Failure of Approval Authority to make a decision
Description: To permit the development of 30 townhouse condominium units
Reference Number: 21CDM-21001C
Property Address: 18314, 18309 Hurontario Street
Municipality/UT: Caledon/Peel
OLT Case No: OLT-21-001395
OLT Lead Case No: OLT-21-001392

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 April 3, 2023, at 10:00 a.m. at the following link:

GoToMeeting: <https://meet.goto.com/660145013>

Access code: 660-145-013

Audio-only line: 1 888 299 1889

Audio-only access code: 660-145-013

3. The parties' initial estimation for the length of the hearing is 15 days. 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.
4. The parties and participants identified at the case management conference are set out in Attachment 1 (see also Attachment 4).
5. The issues are set out in the Issues List attached as Attachment 2. 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.
6. The order of evidence shall be as set out in Attachment 3 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 the parties' 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 – ideally before the case management conference. 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 November 4, 2022 and in accordance with paragraph 22 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 November 25, 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 co-ordinator on or before November 25, 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 February 17, 2023, the parties shall provide copies of their [witness and] expert witness statements to the other parties and to the OLT case co-ordinator and in accordance with paragraph 22 below.

14. On or before January 23, 2023, a participant shall provide copies of their written participant statement to the other parties in accordance with paragraph 22 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 February 27, 2023, the parties shall confirm with the Tribunal if all the reserved hearing dates are still required.
16. On or before March 17, 2023, the Parties shall provide copies of their visual evidence to all of the other parties in accordance with paragraph 22 below. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
17. Parties may provide to all other parties and the OLT case co-ordinator a written response to any written evidence within ten (10) days after the evidence is received and in accordance with paragraph 22 below.
18. The parties shall cooperate to prepare a joint document book which shall be shared with the OLT case co-ordinator on or before March 20, 2023.
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. The parties shall prepare and file a preliminary [hearing plan](#) with the Tribunal on or before March 13, 2023 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.

22. 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 the *Rule 7*.

23. 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.

**These Members are not seized.
So orders the Tribunal.**

Attachment 1
List of Parties and Participants

Parties:

Jannett Nicholson, Richard Nicholson, and 2683894 Ontario Inc.

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Barristers and Solicitors
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Town of Caledon

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The Regional Municipality of Peel

Region of Peel
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Brampton, ON L6T 4B9

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Participants:**Caledon Village Association**

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Attachment 2
Issues List

NOTES: The identification of an issue on the Issues List does not constitute an acknowledgement by the Tribunal or any party that such issue, or the manner in which the issue is expressed, is either appropriate or relevant to the determination of the OLT at the hearing. The extent to which these issues are appropriate or relevant to the determination of the OLT at the hearing will be a matter of evidence and argument at the hearing.

The identification of an issue on this list by a party indicates that party's intent to lead evidence or argue that the issue is relevant to the proceeding, for the purpose of fairly identifying to the other parties the case they need to meet and shall not be construed as the Tribunal having jurisdiction over such matters in each circumstance. Accordingly, no party shall advance an issue not identified on the Issues List without leave of the Tribunal.

Where an issue refers to a provision from the PPS or the Growth Plan or of an applicable Official Plan, in addressing the issue the planning document from which the provision is taken should be read in its entirety with all relevant provisions being considered. For greater certainty, the identification of a specific provision in an issue by an appellant does not preclude the other parties from referring to other provisions from the same planning document in addressing that issue.

ISSUES LIST

OLT Case No. OLT-21-001392

Town of Caledon

1. Does the proposed Zoning By-law Amendment ("ZBA"), draft plan of condominium ("DP") and site plan application ("SP") have regard to matters of provincial interest set out in s.2 of the *Planning Act*, R.S.O. 1990, c.P.13 as amended, including but not limited to ss. (d), (e), (f), (h), (p) and (r)?
2. Are the proposed ZBA, DP and SP (collectively, the "Planning Instruments") consistent with the Provincial Policy Statement, 2020 (the "PPS"), including but not limited to Policies 1.1.1, 1.1.3, 1.2.1, 1.4.3, 1.5.1, 1.6.6.1, 1.6.6.5, 1.6.6.7, 1.6.7.1, 1.6.7.4, 1.7.1, 1.8.1, 2.2.1, 2.6.1, 2.6.3?
3. Are the proposed Planning Instruments in conformity with A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 (the "Growth Plan"), including but not limited to Policies: 2.2.1.2, 2.2.6, 3.2.2, 3.2.6, 3.2.7, 4.2.1, 4.2.7?
4. Are the proposed planning instruments in conformity with the policies of the Region of Peel Official Plan (the "Regional OP", consolidated December 2018),

including but not limited to sections: 3.4.2.1, 3.6.2.8, 5.4.2.7, 5.5.3.2.3, 5.9.2.5, 6.4.2.3, 6.4.2.5?

5. Are the proposed planning instruments in conformity with the Town of Caledon Official Plan (the "Town OP", consolidated April 2018), including but not limited to sections: 3.1.3.7, 3.2.5.13; 3.3.3.3, 3.3.3.4, 4.2.6, 5.9.4.4, 5.9.5.3, 5.10.3.4, 5.10.3.6, 5.10.3.8, 5.10.3.10, 5.10.3.14, 5.10.5.2?
6. Do the proposed Planning Instruments have regard to the Town of Caledon Comprehensive Town-Wide Design Guidelines, including but not limited to sections: 3.1, 3.4, 3.5, 4.1, 6.3, 6.5, 6.6.2, 8.1, 8.2, 9.1?
7. Does the DPA have regard for the criteria set out in section 51(24) of the *Planning Act*, including but not limited to subsections (a), (b), (c), (d), (e), (f), (i), (m)?
8. Is the proposed development premature until (i) access for the development can be secured for to a public highway and (ii) the feasibility of servicing can be demonstrated to the satisfaction of the Region and/or the Town?
9. Is the level of intensification appropriate for the subject site?
10. Is there sufficient regional water servicing capacity for the proposed development?
11. Are the storm water management effects of the proposed development appropriately assessed and addressed?
12. Are the wastewater effects of the proposed development appropriately assessed and addressed?
13. Have the hydrogeological impacts of the proposed development been appropriately assessed and addressed?
14. Have the erosion and sediment control impacts of the proposed development been appropriately assessed and addressed?
15. Are the traffic impacts of the proposed development appropriately addressed? Is there sufficient access to a proposed road network to servicing the proposed development? Can the proposed development be appropriately accessed by emergency and waste collection vehicles?
16. Does the proposed development appropriately address the Ministry of Transportation comments regarding required setbacks from Hurontario Street?
17. Does the proposed development have regard for the Town's Development Standards Manual?
18. Does the proposed development conserve all cultural heritage resources and

archaeological resources on and/or adjacent to the subject property?

19. Does the proposed development consider accessibility through sidewalk connections, lighting and accessible parking spaces?
20. Does the proposed development incorporate appropriate noise mitigation measures?
21. Is the urban design of the proposed development appropriate?
22. Are the proposed Planning Instruments and proposed development in the public interest and good planning to approve?
23. What information, if any, is missing from the plans submitted in support of the DP and SPA?
24. In the event the Tribunal seeks to approve the DP, what conditions of approval should be imposed on the DP?
25. In the event the Tribunal seeks to approve the proposed development, should the order on the ZBA and SPA be withheld until: (i) the ZBA is in a form satisfactory to the Town; and (ii) a condo subdivision agreement and/or site plan agreement is executed?

Region of Peel

1. Has the Applicant proposed an acceptable servicing solution for the development?

Attachment 3
Order of Evidence

1. Nicholson, Richard Nicholson, and 2683894 Ontario Inc.
2. Town of Caledon
3. The Regional Municipality of Peel
4. Reply by Nicholson, Richard Nicholson, and 2683894 Ontario Inc.

Attachment 4

Purpose of the Procedural Order and Meaning of Terms

Party is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an unincorporated group wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorization from the party.

NOTE *that a person who wishes to become a party before or at the hearing, and who did not request this at the Case Management Conference, must ask the Tribunal to permit this.*

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a written statement to the Tribunal on all or some of the issues in the hearing in accordance with Rule 7.7 of the Tribunal's Rules of Practice and Procedure.

NOTE *that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can.*

Written and Visual Evidence:

Written evidence includes all written material, reports, studies, documents, letters and witness statements which a party intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.

Visual evidence includes photographs, maps, videos, models, and overlays which a party intends to present as evidence at the hearing.

Witness Statements:

A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which the witness will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing.

An **expert witness statement** should include the expert's (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing.

A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the

participant will address and a short outline of the evidence on those issues; and a list of reports, relied upon, if any, which the participant will provide to the Tribunal for consideration of the written statement at the hearing.

Additional Information:

Summons: A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties (see Rule 13 on the summons procedure). If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

- direct examination by the party presenting the witness;
- direct examination by any party of similar interest, in the manner determined by the Tribunal;
- cross-examination by parties of opposite interest;
- re-examination by the party presenting the witness; or
- another order of examination mutually agreed among the parties or directed by the Tribunal.