

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** February 27, 2024

**CASE NO(S):**

OLT-23-000534

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

Applicant and Appellant:

Caivan (Perth GC) Limited

Subject:

Request to amend the Official Plan – Failure to adopt the requested amendment

Description:

To permit 940 single detached dwellings and townhomes, a nine-hole golf course, park and open space areas

Reference Number:

OPA-01-2023

Property Address:

141 Peter Street, Part of Lots 26 & 27, Concession 1, Part Lots 25, 26 & 27, Concession 2, Geographic Township of Bathurst, and Part Lot 1 in Southeast Half Lot 1, Concession 1, Part Lot 1 in Southwest Half Lot 1, Concession 2, Geographic Township of Drummond, now in the Town of Perth, County of Lanark

Municipality/UT:

Town of Perth / County of Lanark

OLT Case No.:

OLT-23-000939

OLT Lead Case No.:

OLT-23-000534

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

Applicant and Appellant:

Caivan (Perth GC) Limited

Subject:

Application to amend the Zoning By-law – Refusal or neglect to make a decision

Description:

To permit 940 single detached dwellings and townhomes, a nine-hole golf course, park and open space areas

Reference Number:

ZBL-03-2023

Property Address: 141 Peter Street, Part of Lots 26 & 27,  
Concession 1, Part Lots 25, 26 & 27,  
Concession 2, Geographic Township of  
Bathurst, and Part Lot 1 in Southeast Half Lot 1,  
Concession 1, Part Lot 1 in Southwest Half Lot  
1, Concession 2, Geographic Township of  
Drummond, now in the Town of Perth, County of  
Lanark

Municipality/UT: Town of Perth / County of Lanark  
OLT Case No.: OLT-23-000940  
OLT Lead Case No.: OLT-23-000534

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

Applicant and Appellant: Caivan (Perth GC) Limited  
Subject: Proposed Plan of Subdivision – Failure of  
Approval Authority to make a decision

Description: To permit 940 single detached dwellings and  
townhomes, a nine-hole golf course, park and  
open space areas

Reference Number: 09-T-22001  
Property Address: 141 Peter Street, Part of Lots 26 & 27,  
Concession 1, Part Lots 25, 26 & 27,  
Concession 2, Geographic Township of  
Bathurst, and Part Lot 1 in Southeast Half Lot 1,  
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OLT Case No.: OLT-23-000534  
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OLT Case Name: Caivan (Perth GC) Limited v Lanark County

**Heard:** February 12, 2024 by Video Hearing

**APPEARANCES:****Parties**

Caivan (Perth GC) Limited

County of Lanark

Town of Perth

**Counsel**

Patrick Harrington

Gregory Meeds

Tony Fleming

**MEMORANDUM OF ORAL DECISION DELIVERED BY A. MASON AND HUGH S. WILKINS ON FEBRUARY 12, 2024 AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] This Decision and Order arises from the second Case Management Conference (“Second CMC”) held regarding appeals filed by Caivan (Perth GC) Limited (“Appellant”) pursuant to s. 22(7), s. 34(11) and s. 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (“Act”), concerning the failure to make a decision within the statutory timeframe prescribed by the Act by the Town of Perth (“Town”) with respect to an Official Plan Amendment application (“OPA”) and a Zoning By-law Amendment application (“ZBA”), and by Lanark County (“County”) with respect to a Draft Plan of Subdivision application (“DPS”) (together, “Applications”).

[2] The Applications facilitate the redevelopment of approximately 17 hectares of the existing Perth Golf Course located at 141 Peter Street in the Town (“Subject Lands”) with approximately 940 dwelling units.

**PARTICIPANT STATUS REQUESTS**

[3] In the Decision from the first CMC in these proceedings, held on December 14, 2023, the Tribunal deferred a Party status request from Richard Schooley to this Second CMC. In advance of the Second CMC, Mr. Schooley provided written confirmation to the Tribunal that Party status was not sought, rather he wished to

participate in the matter as a Participant. The Parties did not object to the request and Participant status was granted to Mr. Schooley by the Tribunal.

[4] At the second CMC, the Tribunal noted that under the draft Procedural Order, further Participant written submissions may be provided to the Parties and the Tribunal by **Monday, June 3, 2024**. The Tribunal requested that the Parties circulate to the Participants any revisions to the Appellant's draft instruments and any materials regarding any proposed settlement of the appeals.

### **OPPORTUNITIES FOR SETTLEMENT**

[6] The Parties confirmed that since the last CMC, no further settlement discussions had taken place; however, a willingness to engage in future settlement discussions was expressed. The Tribunal encouraged the Parties to pursue settlement discussions and to request Tribunal-assisted meditation, if needed.

### **PROCEDURAL ORDER AND ISSUES LIST**

[5] The Parties jointly provided a revised draft Issues List and Procedural Order ("PO/IL") in advance of the Second CMC. Having reviewed the PO/IL and discussed same with the Parties, the Tribunal orders that the PO/IL attached as **Schedule 1** to this Decision shall govern the proceedings.

**ORDER**

[6] The Tribunal Orders the direction set out above.

[7] There will be no further notice.

[8] This Panel is not seized.

*“A. Mason”*

A. MASON  
MEMBER

*“Hugh S. Wilkins”*

HUGH S. WILKINS  
VICE CHAIR

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.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.

**SCHEDULE 1****Ontario Land Tribunal**

655 Bay Street, Suite 1500, Toronto, ON M5G 1E5

Tel: 416-212-6349 | 1-866-448-2248

Web Site: olt.gov.on.ca

**CASE NO(S):**

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Municipality/UT:	Town of Perth / County of Lanark
OLT Case No.:	OLT-23-000940
OLT Lead Case No.:	OLT-23-000534

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

Applicant and Appellant:	Caivan (Perth GC) Limited
Subject:	Proposed Plan of Subdivision – Failure of Approval Authority to make a decision
Description:	To permit 940 single detached dwellings and townhomes, a nine-hole golf course, park and open space areas
Reference Number:	09-T-22001
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OLT Case Name:	Caivan (Perth GC) Limited v Lanark County

### 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 **Monday, August 19, 2024 at 10:00AM**. The video hearing may be accessed through the following link and telephone numbers:

**GoTo Meeting:** <https://meet.goto.com/943363669>

**Access code: 943-363-669**

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

**Audio-only access code: 943-363-669**

3. The hearing is scheduled for **18 days**. The Tribunal will not sit on **Monday, September 2, 2024** or **Monday, September 9, 2024**. The hearing is therefore scheduled to conclude on **Friday, September 13, 2024**. 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 found in **Attachment 1**.
4. The parties and participants identified at the case management conference are set out in **Attachment 2**. Unless the Tribunal directs otherwise, a person who wishes to become a party or participant at the hearing who is not listed in Attachment 2 must make the necessary motion to the Tribunal. The Tribunal may refuse to grant such status.
5. The issues to be adjudicated at the hearing 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.
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 the parties' consent, subject to the Tribunal's approval, or by Order of the Tribunal.
7. The meaning of the terms used in this Procedural Order are identified in **Attachment 5**.
8. Any person granted status 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.
9. 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

10. If the Applicant/Appellant intends to seek approval of a revised version of its proposal at the hearing, the Applicant/Appellant shall provide details of the revised proposal, including revised plans and drawings, to the other parties on or before **Friday, March 1, 2024**, unless otherwise agreed to by the parties. If the Applicant/Appellant provides a revised proposal, the parties shall have the right to request that the Tribunal revise and/or augment the issues list to address the revision(s).
11. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of their intended witnesses. This list must be delivered on or before **Monday, April 15, 2024** and in accordance with paragraph 24 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.
12. Expert witnesses in the same field shall have a meeting on or before **Friday, May 10, 2024**, 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 **Friday, May 24, 2024**.
13. 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 15 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.
14. 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 15 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 15 below.
15. On or before **Monday, June 3, 2024**, 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 24 below.
16. On or before **Monday, June 3, 2024**, a participant shall provide copies of their written participant statement to the other parties in accordance with paragraph 24 below. A

participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.

17. Parties may provide to all other parties and the OLT case co-ordinator a written response to any written evidence on or before **Friday, June 28**, and in accordance with paragraph 24 below.
18. On or before **Friday, July 19, 2024**, the parties shall confirm with the Tribunal if all the reserved hearing dates are still required.
19. On or before **Friday, August 2, 2024**, the parties shall provide copies of their visual evidence to all of the other parties in accordance with paragraph 24 below. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
20. The parties shall cooperate to prepare a joint document book which shall be shared with the OLT case co-ordinator on or before **Friday, August 9, 2024**.
21. 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.
22. 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.
23. The parties shall prepare and file a preliminary hearing plan with the Tribunal on or before **Monday, August 12, 2024**, 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.
24. 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*.

**25.** 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  
SUMMARY OF DATES**

<b>DATE</b>	<b>EVENT</b>
<b>Friday, March 1, 2024</b>	Last day to provide revised proposal, including revised plans and drawings (if any)
<b>Monday, April 15, 2024</b>	Exchange of witness lists (names, disciplines, CVs included)
<b>Friday, May 10, 2024</b>	Experts meeting prior to this date
<b>Friday, May 24, 2024</b>	Agreed Statement of Facts
<b>Monday, June 3, 2024</b>	Exchange of Witness Statements, summoned witness outlines, Expert Reports and Participant Statements
<b>Friday, June 28, 2024</b>	Exchange of response to Witness Statements (if any)
<b>Friday, July 19, 2024</b>	Deadline to advise OLT of any reductions in hearing time.
<b>Friday, August 2, 2024</b>	Exchange of visual evidence (if any)
<b>Friday, August 9, 2024</b>	Finalize & submit Joint Document Book
<b>Monday, August 12, 2024</b>	Hearing Plan filed with the Tribunal
<b>Monday, August 19, 2024</b>	Hearing commences

### ATTACHMENT 3 ISSUES LIST

**Note:** 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 Tribunal at the hearing. The extent to which the issues are appropriate, within the jurisdiction of the OLT, or relevant to the determination at the hearing will be a matter of evidence and/or argument at the hearing.

#### ***Planning Issues***

1. Do the applications have appropriate regard for matters of provincial interest as enumerated in section 2 of the *Planning Act*?
2. Is it appropriate to introduce the proposed number of residential units without conducting a comprehensive review to assess:
  - a. the need for the increase in population over the identified planning horizon of the Town's Official Plan;
  - b. opportunities to address demonstrable need through intensification, redevelopment and existing designated growth areas; and
  - c. the demands on infrastructure and public service facilities that the development will create?
3. Is the Application consistent with the Provincial Policy Statement, 2020 (and 2023 if this version of the PPS is in force and effect when this matter is heard by the Tribunal)?
  - a. The application of the "consistency with" test will consider, but not be limited to the following policies of the PPS, 2020:
    - i. Policy 1.1.1;
    - ii. Policy 1.1.2;
    - iii. Section 1.1.3;
    - iv. Section 1.4;
    - v. Policy 1.6.4;
    - vi. Policy 1.6.8; and
    - vii. Section 3.1

4. Does the Application conform to the policies of the County of Lanark Sustainable Communities Official Plan (SCOP)?
  - a. The application of the conformity test will consider, but not be limited to the following policies of the of the SCOP:
    - i. Policy 1.1 Population Projections and Distribution, as amended by Amendment No. 8 to the SCOP;
    - ii. Appendix 2 – Historical and Projected Population by Municipality, as amended by Amendment No. 8 to the SCOP;
    - iii. Section 2.3 Settlement Area Policies;
    - iv. Section 5.0 Natural Heritage;
    - v. Section 7.0 Public Health and Safety;
    - vi. Policy 8.2.1 Plans of Subdivision;
    - vii. Policy 8.2.9 Affordable Housing, Subsection 5.
  
5. Does the Application conform to the policies, purpose and intent of the Town of Perth Official Plan (the “Official Plan”)?
  - a. The application of the conformity test will consider, but not be limited to the following policies of the Town of Perth Official Plan:
    - i. 2.4 Official Plan Review Process;
    - ii. 2.6 Planning Period;
    - iii. 3.1 Population;
    - iv. 3.2 A) Housing;
    - v. 3.4 C) Infrastructure and Public Service Facilities;
    - vi. 5.0 Functional Support Policies;
    - vii. 5.1 Statement of Intent;
    - viii. 5.2 Sewage and Water;
    - ix. 5.3 Storm Water Management and Drainage;
    - x. 5.5 Transportation;
    - xi. 5.9.1(d);

- xii. 5.9.3;
- xiii. 5.10;
- xiv. 7.3.2;
- xv. 7.4;
- xvi. 8.1.4;
- xvii. 8.6; and
- xviii. 8.8 Special Study Area Designation

- b. Can the Official Plan be amended to designate lands currently designated as *Special Study Area* to *Residential* without conducting a comprehensive review as required by section 8.8 of the Town Official Plan?

### ***Transportation Issues***

- 6. Will the proposed ingress and egress to and from the subdivision be sufficient from an emergency services perspective and from the perspective of long-term infrastructure replacement/maintenance?
- 7. Does the proposed ingress and egress to the site conform to the principles of good transportation planning and does it provide safe access?
- 8. Does the proposed ingress and egress to the site create unacceptable traffic impacts on adjacent streets?
- 9. Are the proposed parking standards functional?

### ***Stormwater Management Issues***

- 10. Can the proposed development be accommodated with appropriately sized and located stormwater infrastructure that avoids potential impacts on the Tay River and Grant's Creek floodplains?

### ***Natural Hazards Issues***

- 11. Has the floodplain been properly delineated to allow an assessment of possible natural hazard constraints on the proposed development?
- 12. Have the potential impacts of the Tay River and Grant's Creek floodplains been adequately addressed for the proposed subdivision?

**Zoning Amendment Issues**

13. Are the proposed zoning performance standards appropriate?

**Draft Plan of Subdivision Issues**

14. Does the proposed draft plan of subdivision have appropriate regard for the matters and criteria to be addressed pursuant to s. 51(24) of the *Planning Act*?

15. What revisions, if any, need be made to the Draft Plan of Subdivision prior to approval?

16. What conditions of draft plan approval should be applied in accordance with s. 51(25) of the *Planning Act*?

**Overall**

17. Would the approval of the applications constitute good planning in the greater public interest?



**ATTACHMENT 4  
ORDER OF EVIDENCE**

1. Caivan (Perth GG) Limited.
2. County of Lanark.
3. Town of Perth.
4. Caivan (Perth GC) Limited (in reply, if any).

## ATTACHMENT 5

### Meaning of terms used in the Procedural Order:

A **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. An **unincorporated group** cannot be a party and 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 authorisation 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 (CMC), must ask the Tribunal to permit this.

A **participant** is an individual or corporation, whether represented by a lawyer or not, who may make a written submission to the Tribunal. A participant cannot make an oral submission to the Tribunal or present oral evidence (testify in-person) at the hearing (only a party may do so). Section 17 of the Ontario Land Tribunal Act states that a person who is not a party to a proceeding may only make a submission to the Tribunal in writing. The Tribunal may direct a participant to attend a hearing to answer questions from the Tribunal on the content of their written submission, should that be found necessary by the Tribunal. A participant may also be asked questions by the parties should the Tribunal direct a participant to attend a hearing to answer questions on the content of their written submission.

A participant must be identified and be accorded participant status by the Tribunal at the CMC. A participant will not receive notice of conference calls on procedural issues that may be scheduled prior to the hearing, nor receive notice of mediation. A participant cannot ask for costs, or review of a decision, as a participant does not have the rights of a party to make such requests of the Tribunal.

**Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant 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 or participant intends to present as evidence at the hearing.

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 he or she will discuss; and a list of reports or materials that the witness will rely on at the hearing.

An **expert witness statement** should include his or her (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 supporting their opinions and conclusions and (5) a list of reports or materials that the witness will rely on at the hearing. An expert witness statement must be accompanied by an acknowledgement of expert's duty.

A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a statement of the participant's position on the appeal; a list of the issues which the participant wishes to address and the submissions of the participant on those issues; and a list of reports or materials, if any, which the participant wishes to refer to in their statement.

### **Additional Information**

A **summons** may compel the appearance of a person before the Tribunal who has not agreed to appear as a witness. A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons through a request. (See Rule 13 on the summons procedure.) The request should indicate how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the information provided in the request that the evidence is relevant, necessary or admissible, the party requesting the summons may provide a further request with more detail or bring a motion in accordance with the Rules.

**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.