

Ontario Land Tribunal

Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: March 04, 2025

CASE NO(S): OLT-24-001038

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

Applicant and Appellant: Peterborough Action for Tiny Homes (PATH) - Keith Dalton
Subject: Application to amend the Zoning By-law – Refusal or neglect to make a decision.
Description: To enable the adoption of a temporary use by-law to permit a transitional housing development.
Reference Number: Z2408
Property Address: 385 Lansdowne Street East
Municipality/UT: City of Peterborough
OLT Case No.: OLT-24-001038
OLT Lead Case No.: OLT-24-001038
OLT Case Name: PATH v. Peterborough (City)

Heard: January 29, 2025 by Video Hearing

APPEARANCES:

Parties

Peterborough Action for Tiny Homes (PATH)

City of Peterborough

Toromont Industries Ltd.

Counsel

Will Thomson

Alan Barber

Tara Piurko
Noah Gordon (*in absentia*)

DECISION DELIVERED BY L.P. YOU ON JANUARY 29, 2025 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This is the first Case Management Conference (“CMC”) respecting an appeal by Peterborough Action for Tiny Homes (PATH) (“Applicant/Appellant”) under s. 34(11) of the *Planning Act*, R. S. O. 1990, c. P. 13, as amended regarding the refusal of the City of Peterborough (“City”) of the Zoning By-law Amendment application to permit a three-year lease for the lands municipally known as 385 Lansdowne Street East.

SERVICE OF NOTICE OF CMC

[2] There is no issue with service of the Notice of this CMC, and so no further notice is required. The Tribunal received an Affidavit of Service from Will Thomson, which is marked as **Exhibit 1**.

REQUESTS FOR STATUS

[3] The Tribunal received one written request for Party status from Toromont Industries Ltd., which was granted Party status on consent from the statutory Parties.

[4] The following individuals and companies requested and were granted Participant status on consent:

- M.J. Davenport & Associates Inc. and 173 Lansdowne East Inc. (Murray Davenport)
- NDR Vivan (Lynn Arsenault)
- Vandermeulen Plumbing (Steve Vandermeulen)
- EmTwo Properties Inc. (represented by Counsel: Jesse White)
- Peterborough Pet Hospital (Dr. Joseph Muise/Barb Bunker)

- HLM Developments Inc. (Patricia Davenport)

MEDIATION AND SETTLEMENT

[5] The Tribunal explored the possibility of mediation and settlement with the Parties and encouraged Parties to narrow down the scope of the issues for a future hearing. The Parties agreed to keep the Tribunal apprised of any resolution efforts, which the Tribunal finds satisfactory.

PROCEDURAL ORDER AND ISSUES LIST

[6] The Tribunal received and reviewed a Draft Procedural Order from the Parties. The Tribunal finds it acceptable, and the proceedings shall be governed by it (see **Attachment 1**).

HEARING

[7] Upon request of the Parties, the Tribunal set a 10-day Merit Hearing commencing on **Thursday, June 12, 2025 to Thursday, June 26, 2025 at 10 a.m.** by video hearing. **There will be no Member sitting on June 16, 2025.**

[8] 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:

Go To Meeting: <https://global.gotomeeting.com/join/638422541>

Access Code: 638-422-541

[9] 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>

[10] 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: **1-888-299-1889 (Toll Free) or +1 (647) 497-9373. The Access Code is as indicated above.**

[11] 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.

ORDER

[12] **The Tribunal Orders That:**

1. the date and particulars of the Merit Hearing are set out above; and,
2. the Procedural Order appended as **Attachment 1** shall govern the conduct of the proceedings.

[13] The Member is not seized but may be spoken to through the Case Coordinator if any issues arise.

“L.P. You”

L.P. YOU
MEMBER

Ontario Land Tribunal

Website: 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.

ATTACHMENT 1



Ontario Land Tribunal

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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 **June 12, 2025 at 10:00 a.m.** Unless otherwise subsequently ordered by the Tribunal, the Hearing shall proceed by videoconference.
3. The parties' initial estimation for the length of the hearing is **10** 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**.

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 **March 7, 2025** 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 **April 4, 2025** 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 **May 2, 2025**.
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 **April 25, 2025**, 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 **April 25, 2025**, 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 **May 2, 2025**, the parties shall confirm with the Tribunal if all the reserved hearing dates are still required.
16. On or before **May 28, 2025**, 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, by **May 23, 2025**, 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 **June 2, 2025**.
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, on or before **June 5, 2025** 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 **June 2, 2025** 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 unless otherwise directed. 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.

SUMMARY OF PROCEDURAL DATES

DATE	EVENT
March 7, 2025	Exchange of list of witnesses and the order in which they will be called
April 4, 2025	Meeting of expert witnesses in the same field
April 25, 2025	Exchange of expert reports/expert witness statements/written evidence, evidence outlines for witnesses under summons, participant statements
May 2, 2025	Confirm if the 10 reserved hearing dates are required
May 2, 2025	Filing of agreed statement of facts
May 23, 2025	Exchange of response evidence
May 28, 2025	Exchange of visual evidence
June 2, 2025	Parties to prepare and file Joint Document Book
June 2, 2025	Parties to prepare and file preliminary hearing plan
June 5, 2025	Parties to inform Tribunal if witness(es) will not provide oral evidence, and written evidence will no longer form part of their record
June 12, 2025	Video hearing to begin

Attachment “1”
LIST OF PARTIES AND PARTICIPANTS

PARTIES

Party	Counsel / Representative
Peterborough Action for Tiny Homes	Will Thomson <i>Barrister and Solicitor</i> PO Box 314. Collingwood PO Main, ON. L9Y3Z7 E: will@willthomson.ca P: 705 441 0054
City of Peterborough	Alan Barber City of Peterborough 500 George St N, Peterborough, ON K9H 3R9 ABarber@Peterborough.ca 705-742-7777 ext. 1897
Toromont Industries Ltd.	Tara Piurko / Noah Gordon Miller Thomson LLP Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, Ontario M5H 3S1 Email: tpiurko@millerthomson.com / ngordon@millerthomson.com Tel: (416) 595-2647

PARTICIPANT

Participant	Counsel / Representative / Contact Information
Peterborough Pet Hospital	Dr. Joseph Muise / Barb Bunker Email: officepph1@gmail.com Tel: (705) 742-8837
EmTwo Properties Inc.	Jesse White Miller Thomson LLP Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, Ontario M5H 3S1 Email: tjwhite@millerthomson.com Tel: (416) 597-4371
HLM Developments Inc.	Patricia Davenport Email: davenport_pa@hotmail.com
M.J. Davenport & Associates Inc. & 173 Landsdowne East Inc.	Murray Davenport Email: davenport_murray@hotmail.com Tel: (705) 745-6676
NDR Vivian	Lynn Arsenault Email: lynnarsenault@gmail.com
Vandermeulen Plumbing Ltd: The Plumbing Professionals	Steve Vandermeulen Email: office@vandermeulenplumbing.ca / steve@vandermeulenplumbing.ca Tel: (705) 742-3433

Attachment “2”
ISSUES LIST

Issues List for Toromont Industries Ltd.

Notes:

- The Issues List uses the list of Defined Terms found after the last issue in this Attachment ‘2’.
- The identification of an issue on this Issues List does not mean that all parties agree that such an issue, or the manner in which it is expressed, is appropriate or relevant for the proper determination of the appeal. The extent of the appropriateness and/or relevance of the issue may be a matter of evidence and/or argument at the hearing.

Land Use Planning:

1. Does the proposal have regard to matters of provincial interest, in particular Planning Act Sections 2 (h), (l), (o), and (p)?
2. Is the proposal consistent with the Provincial Planning Statement (2024), in particular, Policies 2.8.1.1. e), 2.8.1.3, 2.8.2, 3.3.3, 3.5?
3. Would the proposal create adverse effects as defined in Section 8 of the PPS (2024) due to land use incompatibility between the proposed use of the Subject Property and neighbouring land uses, namely:
 - a) potentially cause harm or discomfort to any person on the Subject Property;
 - b) cause an adverse effect on the health of any person residing on the Subject Property;
 - c) impair the safety of any person relating to the adjacency of land uses; and
 - d) interfere with the conduct of normal business for Toromont and/or other neighbouring commercial and industrial land uses?
4. Is the proposal compatible with the neighbouring operations of an existing major facility and major trip generator as defined in the PPS (2024)?
5. Is the proposal defined as a sensitive land use, according to the PPS

(2024), and the Provincial D-Series Guidelines?

6. Is the proposal appropriate from a land use planning perspective considering adjacent land use, traffic, noise, and safety?
7. Are residential and institutional uses compatible with existing uses within the Employment District located immediately to the south of the Subject Property,
8. Were the recommendations set out in the Cambium Study appropriate?
9. Is it appropriate to consider the proposal as an institutional use?
10. Does the proposal conform to the City of Peterborough Official Plan (2024), in particular Policies: 3.3.7. g. viii.; 3.3.7. l.; 4.1.2.a.ii; 4.4.1 d. v.; 4.4.1.f.i.; 4.4.2 b.; 4.4.2 g.; 4.4.2 p.; 4.5.1. d.; 4.5.1.v.; 4.5.1.j.; 4.5.1.m.; 6.2.2.g. ii.; 6.2.2.g.iv.; 6.2.3.j.; 7.4.4.d.i.; 7.4.4.d.iv.; 7.4.4.d.v.; and 7.4.4.d.vi?
11. Does the proposal prejudice Toromont's operation and facility's ability to operate and expand, pursuant to City of Peterborough Official Plan (2024) Policy 4.5.3 a.?
12. Does Toromont's facility conform to City of Peterborough Official Plan (2024) Policy 4.5.3 b.?
13. Does the proposal meet the Official Plan's definition of "*compatible development*"?
14. Does the proposal meet the Official Plan's definition of "*public service facilities*"?
15. Are the current land use compatibility guidelines ("D-Series guidelines") that municipalities and other planning authorities use when making land use planning decisions applicable to the consideration of the proposal, pursuant to Guideline D-1 (2.0)?
16. Does the proposal have regard to, and will the Application implement the current land use compatibility guidelines ("D-Series guidelines") that municipalities and other planning authorities use when making land use planning decisions, in particular Guidelines D-1 (3.0); D-1-1 (1.2); D-1-1 (1.3); D-1-1 (4.1 – 4.3); D-1-1 (7.1 – 7.7); D-6; and D-6-3?

17. Does the proposal meet the D-Series guidelines' definitions of *compatible land use and land use compatibility*?
18. What is the Toromont operation's influence/potential influence area, and is the *separation distance* between Toromont's facility and the PATH proposal appropriate?
19. Does the proposal adequately identify, address and mitigate from "significant impacts" as defined in the D Series Guidelines?
20. Is it appropriate for land use compatibility to be addressed at the site plan control application stage?

Transportation:

21. Is the Subject Property along a high-capacity arterial, as classified by the City of Peterborough Official Plan (2024) Policy 6.2.6.a.ii.?
22. Will the existing transportation system provide efficient and safe transportation for the pedestrian, transit, vehicular and emergency services demands of the proposed land use/development?
23. Has the Appellant and/or the City completed the necessary studies/review consistent with industry accepted practice to determine that the existing transportation system provides efficient and safe transportation for the pedestrian, transit, vehicular and emergency services demands of the proposed land use/development?

Noise/Air:

24. Has the noise study conducted in support of the Application identified and adequately addressed the impacts on the existing and planned expansion of the Toromont and Battlefield facilities and their operations, adequately addressed the proposed sensitive land uses and receptors, and adequately determined what noise mitigation is needed to comply with the noise criteria of the NPC-300, section 1.2.6 of the PPS (2020), and section 3.5 of the PPS (2024)?]
25. Will the proposal have adverse impacts on existing and future employment uses in its vicinity?

26. How will the development adjacent to or nearby Employment Districts be appropriately designed, buffered and/or separated from industries as necessary to mitigate adverse effects from noise, vibration, traffic, odour, dust and other contaminants, and to promote safety and security?
27. Has the noise assessment been considered in the proposal, including the noise limits to the proposal and the potential impacts of the development to the surrounding areas?

Defined Terms

Appellant means: Peterborough Action for Tiny Homes/PATH

Cambium Study means: the Land Use Compatibility Study prepared by Cambium Inc.

City means: The Corporation of the City of Peterborough

D-Series Guidelines means: the provincial [D-Series Guidelines](#)

Chapter 691 means: the Chapter 691 of the City of Peterborough Municipal Code – Noise

NPC-300 means: the [Environmental Noise Guide Stationary and Transportation Sources – Approval and Planning \(NPC-300\)](#)

Official Plan means: the City of Peterborough Official Plan (2024)

Planning Act means: [Planning Act, R.S.O. 1990, c. P.13, as amended](#)

PPS (2024) means: [Provincial Planning Statement \(2024\)](#)

Subject Property means: 385 Lansdowne Street East, Peterborough, Ontario

Zoning By-Law means: the [City of Peterborough Zoning By-law](#)

Attachment “3”
ORDER OF EVIDENCE

1. Appellant (PATH).
2. City of Peterborough.
3. Toromont Industries Ltd.
4. Participant Statements.
5. Appellant (PATH) in Reply (if any).
6. Closing Argument.

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.*