

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



**ISSUE DATE:** October 23, 2023

**CASE NO(S):**

OLT-23-000741

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

Applicant/Appellant:

OBD Developments Inc.

Subject:

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

Description:

To permit temporary use By-law for rock  
crushing on residential lands

Reference Number:

Z22-12

Property Address:

Part Lots 30 and 31, Concession 2, Baxter

Municipality/UT:

Georgian Bay/Muskoka

OLT Case No.:

OLT-23-000741

OLT Case Name:

OBD Development Inc. v. Georgian Bay  
(Township)

**Heard:**

October 10, 2023, by Video Hearing

**APPEARANCES:**

**Parties**

**Counsel**

OBD Developments Inc.  
("Applicant/Appellant")

David White, Q.C.

Township of Georgian Bay

Peter Pickfield

**DECISION DELIVERED BY ROBERT G. ACKERMAN ON OCTOBER 10, 2023, AND  
ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] On October 10, 2023, the first Case Management Conference (“CMC”) was heard in relation to the Appeal brought under s. 34(11) of the *Planning Act* by OBD Developments Inc. (“Applicant/Appellant”) against the Township of Georgian Bay (“Respondent”) for failure to make a decision within the statutory timeframes on an Application for a Zoning By-law Amendment (“ZBA”) (the “Application”) in relation to properties described as Parts of Lots 30 and 31, Baxter, Township of Georgian Bay, District of Muskoka (no municipal address assigned) (the “Subject Lands”).

[2] The purpose of the Application is to facilitate a temporary use By-law to permit rock crushing for a period of two years on the Subject Lands, which are located in Port Severn, south of Honey Harbour Road. The Subject Lands are part of the Oak Bay residential development consisting of two Draft Approved Plans of Subdivision, S-2005-7 and S-2005-10 (Summerside). The Subject Lands are designated as Block 19 on Plan of Subdivision S-2005-7. Shot/blast rock was generated during previous phases of the construction and servicing of the Oak Bay subdivision, and the larger rock which could not be used for construction purposes was stockpiled on the Subject Lands. The Appellant seeks the ZBA to permit the crushing of the stockpiled rock, as well as the further blast rock to be generated from the continued servicing of the residential development. Smaller shot rock has been, and will be, used by the Appellant for road base granular and foundation backfill, while the larger rock requires crushing to be of use for construction purposes.

[3] Rock crushing is not a permitted use under the Zoning By-law (“ZBL”) and a ZBA is therefore required to permit temporary rock crushing on the Subject Lands. The requested ZBA would permit crushing in two phases:

- Phase 1 would permit the crushing of the existing stockpile of approximately 14,000 cubic metres (31,000 T) of rock; and

- Phase 2 would permit the crushing of 15,500 cubic metres (34,000 Tonnes) of rock to be generated from servicing the Summerside phase of the development.

[4] The Appellant's Application for the Temporary use By-law was filed on May 6, 2022, and on November 25, 2022, the Respondent issued a Notice of Complete Application. The Respondent failed to make a Decision on the Application, and the Appellant filed this Appeal on July 19, 2023.

[5] The Tribunal marked as **Exhibit 1** the Affidavit of Service of Jenny Gillegan, sworn on September 7, 2023, confirming that Notice of this CMC was properly given.

## **REQUESTS FOR STATUS**

[6] The statutory Parties to this Appeal are the Applicant/Appellant and the Respondent.

[7] The Tribunal had received a Party Status Request and several Participant Status Requests.

[8] The Party Status Request, and in the alternative, a Participant Status Request, was received from Jacob Loewen and was marked as **Exhibit 2**. Mr. Loewen identified his interest as a property owner in the vicinity of the Subject Lands. He raised concerns regarding excessive noise and environmental issues with respect to the proposed rock crushing on the Subject Lands, indicating that as a retired Professional Engineer, he would be in a position to provide expert commentary and insight regarding the proposal. After considering the requirement that an expert witness be independent and the role and obligations of a Party, Mr. Loewen withdrew his request for Party Status and asked, in the alternative, that he be granted Participant Status. The Tribunal, on consent of the Parties, granted Participant Status to Mr. Loewen.

[9] Participant Status requests were received from the following persons and marked as Exhibits:

1. David Miller **Exhibit 3**;
2. Whitney Miller **Exhibit 3**;
3. Rymanta Kaknevicus **Exhibit 4**;
4. John Dent **Exhibit 5**;
5. David Flower **Exhibit 6**;
6. Thomas Bain **Exhibit 7**; and
7. Gary Filipchuk **Exhibit 8**.

[10] David Miller, Whitney Miller and Thomas Bain did not appear, although properly served. Of the Participants who did appear, all indicated that they live within the vicinity of the Subject Lands and raised various issues including concerns with; the noise of the rock crushing operation, environmental concerns, air quality concerns, and health concerns attributable to air-borne rock dust. The Tribunal found that individuals who attended and had requested Participant Status had an interest in the matter, and will assist the Tribunal in understanding the potential impacts of the Proposal on the local community. The Tribunal, on consent of the Parties, granted Participant Status to:

1. Rymanta Kaknevicus;
2. John Dent;
3. David Flower;
4. Gary Filipchuk.

[11] In response to the Notice, the Tribunal received no other requests for Status as either a Party or a Participant.

## **MEDIATION AND SETTLEMENT**

[12] The Tribunal raised the issue of opportunities for settlement discussions, including the use of Tribunal-assisted mediation. Counsel for the Parties indicated that they were in ongoing discussions.

[13] The Parties are directed to advise the Tribunal in writing should they reach a settlement with respect to some or all of the issues prior to the Hearing and, should they wish to pursue Tribunal-assisted mediation, they may make a written request to the Tribunal through the Case Coordinator.

## **PROCEDURAL ORDER, ISSUES LIST AND ORDER OF EVIDENCE**

[14] Counsel had not produced a draft Procedural Order (“PO”) prior to the CMC. However, Counsel advised that an Issues List (“IL”) had been circulated but not filed with the Tribunal. Counsel advised that their clients were prepared to set a Hearing date, and that once the Hearing was scheduled, they would be in a position to complete a draft PO which they anticipated, would be on consent. Counsel agreed that a total of nine witnesses would be called at the Hearing and that a five-day Hearing would be required. After consultation with the Tribunal’s Hearing Coordinator, a five-day Hearing was agreed upon for February 5 to 9, 2024. The Tribunal directed that Counsel prepare the draft PO, which is to be filed with the Case Coordinator, and that the PO include an IL and an Order of Evidence which includes the names and areas of expertise for each expert witness, and the names and involvement of any lay witness.

[15] The Parties are directed by the Tribunal to provide a consent draft PO, including the IL and Order of Evidence, to the Tribunal on or before **Friday, October 20, 2023**.

[16] Once received and issued, the PO, will govern all further pre-hearing procedural requirements and the Hearing of the Appeal.

**HEARING DATE**

[17] Parties and Participants are asked to log into the Hearing at least **15 minutes** before the start of the event to test their video and audio connections:

**Monday, February 5, 2024, at 10 a.m. (five-day Merit Hearing)**

**GoTo Meeting:** <https://meet.goto.com/680885805>

**Access code:** 680-885-805

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

[18] 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 at: <https://app.gotomeeting.com/home.html>

[19] 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 mentioned above.

[20] 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.

**OTHER MATTERS**

[21] As David Miller, Whitney Miller and Thomas Bain did not appear, Counsel for the Appellant undertook to serve each with notification of the Hearing date. The Tribunal inquired as to whether there were any other matters to be addressed, which might assist in the fair, just and expeditious resolution of this Appeal. The Parties indicated there were none.

**ORDER**

[22] **THE TRIBUNAL ORDERS THAT:**

A. The following persons are Participants in this Appeal:

1. Jacob Loewen;
2. Rymanta Kakneviccius;
3. John Dent;
4. David Flower;
5. Gary Filipchuk.

[23] The Hearing of this Appeal will proceed on **Monday, February 5, 2024, at 10 a.m.**, for a period of five days.

[24] There will no be further Notice.

[25] This Member is not seized, but may be contacted through the Case Coordinator should procedural issues arise.

*“Robert G. Ackerman”*

ROBERT G. ACKERMAN  
MEMBER

**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

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