

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



**ISSUE DATE:** April 11, 2024

**CASE NO(S):** OLT-23-000771

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Darryl Cary  
Subject: By-law No. 2023-19  
Description: to establish site specific zoning to existing  
Tourist Commercial Zone  
Reference Number: By-law 2023-19  
Property Address: 1680 Lakeside Trail  
Municipality/UT: Municipality of Magnetawan  
OLT Case No.: OLT-23-000771  
OLT Lead Case No.: OLT-23-000771  
OLT Case Name: Cary v. Magnetawan (Municipality)

**Heard:** March 28, 2024 by video hearing ("VH")

**APPEARANCES:**

**Parties**

**Counsel/Agent\***

Darryl Cary  
(Appellant)

Self-represented\*

Khalanie Campers Corporation  
(Applicant)

Russell Cheeseman, Stephanie Fleming

Municipality of Magnetawan  
("Municipality")

Edward Veldboom

**MEMORANDUM OF ORAL DECISION DELIVERED BY K.R. ANDREWS ON MARCH 28, 2024 AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] This is the first Case Management Conference (“CMC”) respecting an appeal by Darryl Cary. The appeal arises following the passing of a Zoning By-law Amendment, By-law 2023-19 (“ZBA”), to establish site specific zoning to the existing Tourist Commercial Zone portion of the subject lands. The ZBA purports to permit the use of “three-season trailers” on the property, recognize historic uses of the property, control the geographic extent of the existing camp-sites on the property, control the location of trailers, and limit the intensity of uses by establishing maximum unit permissions for the site.

[2] It is noteworthy that the Applicant takes the position that the requested ZBA is not necessary. Counsel for the Applicant explained that the historic uses of the property, including the location and placement of camper trailers and number of units on the site, are all already permitted due to the property’s status as “legal non-conforming”, being a result of these uses pre-dating the implementation of the applicable Zoning By-law.

[3] However, the Municipality takes the position that the introduction of allowing three-season trailers on the existing campsites constitutes a new use, which it claims does not fall under the Applicant’s legal non-conforming allowances, and so a ZBA is required to allow such uses. Counsel for the Applicant further explained that, while it does not agree with the Municipality’s position in this regard, his client wishes to put the matter to rest by obtaining the subject ZBA. In addition to allowing three-season trailers, the subject ZBA also purports to effectively codify all of the historical uses of the property associated with the campground.

## **SERVICE OF NOTICE OF CMC**

[4] There is no issue with service of the Notice of this CMC, and so no further notice is required. The Tribunal is in receipt of the Affidavit of Service, which is marked as **Exhibit 1**.

## **REQUESTS FOR STATUS**

[5] Noreen Bondy and Guy Watts attended the CMC seeking Party status. Both are area residents, and so the Tribunal finds that they have a direct interest in the matter. However, after the Tribunal explained the role and obligations of a party, and after discussions about the scope of the issues of the matter, both individuals withdrew their request for Party status and requested Participant status instead. The Tribunal granted such Participant status to both.

## **MEDIATION AND SETTLEMENT**

[6] The Tribunal explored the possibility of mediation and settlement with the parties. The parties both expressed openness to resolution discussions. They further confirmed that they will keep the Tribunal apprised of any developments with their resolution efforts, which the Tribunal finds satisfactory.

## **PROCEDURAL ORDER AND ISSUES LIST**

[7] At the CMC, the Tribunal confirmed that the Appellant's concerns involve the following:

1. Need for vegetative buffering;
2. Need for greater setbacks;
3. Traffic issues regarding access to the campground;

4. Adequacy of leaching pits for three season trailers; and
5. Adequacy of shoreline setbacks associated with three season trailers.

[8] After extensive discussions with the parties, the Tribunal finds that:

- Item #1 is more properly dealt with at the site plan stage of the process. As a result, it will not form part of the Issues List;
- Item #3 involves a well established and historical use of the property which is not addressed in the subject ZBA, and access to the property is generally at the discretion of the Municipality through a permit process. With this question falling outside of the Tribunal's jurisdiction, it will not form part of the Issues List;
- Item #4 is a matter for the Ministry of the Environment, Conservation and Parks to determine, and related permits have apparently already been obtained. With this question again falling outside of the Tribunal's jurisdiction, it will not form part of the Issues List; and
- Item #5 has been addressed through a Sewage Assessment Report and the Appellant has nothing to dispute its findings (which is that the setbacks are adequate). As a result of the Appellant not being prepared to bring any contrary evidence, it will also not form part of the Issues List.

[9] This leaves only Item #2, which was more specifically described by Mr. Cary as a concern about whether the ZBA provides adequate setbacks for three season trailers when such trailers are moved onto existing camp sites. He recognizes that, while such sites have historically been located very close to his property line, they have not historically accommodated such larger trailers. Mr. Cary further correctly pointed out that the subject ZBA includes provisions pertaining to setbacks along his property when

existing uses are maintained, and it is also references setbacks involving Three Season Trailers in general, but it does not include adequate provisions (in his opinion) to address situations when Three Season Trailers are moved onto existing sites that feature shorter setbacks. The Tribunal finds this to be a proper issue to be included on an Issues List, and so the question of whether the proposed setbacks along Mr. Cary's property are adequate can be tested at a hearing.

[10] At the request of the Tribunal, the parties prepared and filed a draft Procedural Order, including Issues List which includes the above-described one issue. The Tribunal finds it acceptable and the proceedings shall be governed by it (see Attachment 1).

## HEARING

[11] Upon request of the Parties, the Tribunal set a **one-day** hearing commencing on **Wednesday, May 22, 2024, at 10 a.m.** by video hearing. No further Notice is required for the hearing. The Tribunal confirms that this date may be used for the purpose of a hearing, motion to dismiss (upon proper Notice) or settlement.

[12] 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

**GoToMeeting:** <https://global.gotomeeting.com/join/687587165>

**Access code: 687-587-165**

[13] 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://app.gotomeeting.com/home.html) or a web application is available:

<https://app.gotomeeting.com/home.html>

[14] 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) 1-888-299-1889 or +1 (647) 497-9373**. The **access code** is **as indicated above**.

[15] 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**

[16] **THE TRIBUNAL ORDERS** that:

1. The date and particulars of the hearing are set out above;
2. The Procedural Order appended as Schedule 1 shall govern the proceedings; and
3. Noreen Bondy and Guy Watts are granted Participant status.

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

*"K.R. Andrews"*

K.R. ANDREWS  
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

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

**DATE: April 1, 2024****CASE NO(S): OLT-23-000771**

**PROCEEDING COMMENCED UNDER:** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant:	Darryl Cary
Subject:	By-law No. 2023-19
Description:	To establish site specific zoning to existing Tourist Commercial Zone
Reference Number:	By-law 2023-19
Property Address:	1680 Lakeside Trail
Municipality:	Municipality of Magnetawan
OLT Case No.:	OLT-23-000771
OLT Lead Case No.:	OLT-23-000771
OLT Case Name:	Cary v Magnetawan (Municipality)

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 Wednesday, May 22, 2024 at 10:00 a.m.
3. The parties' initial estimation for the length of the hearing is one (1) day. 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 the sample procedural order for the meaning of these terms).
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 Friday, April 12, 2024, and in accordance with paragraph 21 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 Friday April 19, 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 Tuesday, April 23, 2024.
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 Friday, April 26, 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 21 below.
- 14.** On or before Friday, April 26, 2024 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 Tuesday, April 30, 2024 the parties shall confirm with the Tribunal if all the reserved hearing dates are still required.
- 16.** On or before Friday, May 17, 2024, the parties shall provide copies of their visual evidence to all of the other parties in accordance with paragraph 21 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 on or before Friday, May 10, 2024, in accordance with paragraph 21 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 Friday, May 17, 2024.
- 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.** 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*.

**22.** 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.

**This Member is [not] seized.**

**So orders the Tribunal.**

BEFORE:

Name of Member:

Date:

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TRIBUNAL REGISTRAR

### ***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.

**Attachment 1****List of Parties and Participants**

1. **Darryl Cary**  
Larry Douglas  
[larry@lwdouglaslaw.ca](mailto:larry@lwdouglaslaw.ca)
  
2. **Municipality of Magnetawan**  
Edward Veldboom  
[eveldboom@russellchristie.com](mailto:eveldboom@russellchristie.com)
  
3. **Klahanie Campers Corporation**  
Russell D. Cheeseman  
Stephanie A. Fleming  
[rdcheese@aol.com](mailto:rdcheese@aol.com)  
[sfleming@mlawc.com](mailto:sfleming@mlawc.com)

## Participants

1. Guy Watts  
[Sensibleac25@rogers.com](mailto:Sensibleac25@rogers.com)
  
2. Noreen Bondi  
[bondyn@yahoo.com](mailto:bondyn@yahoo.com)

**Attachment 2****Issues List**

1. Should s.2(f)(ii) of By-law No. 2023-19 provide no exemptions to the setback for Park Model Trailers?

**Attachment 3**  
**Order of Evidence**

- 1. Darryl Cary**
- 2. Municipality of Magnetawan**
- 3. Klahanie Campers Corporation**
- 4. Darryl Cary, in reply**



**Attachment 4****Summary of Procedural Dates**

<b>Date</b>	<b>Event</b>
Friday, April 12, 2024	Witness List
Friday April 19, 2024	Final day for expert witness meeting
Tuesday, April 23, 2024	Statement of Agreed Facts and Issues filed
Friday, April 26, 2024	Expert witness and witness statements due
Friday, April 26, 2024	Written participant statement due
Friday, May 10, 2024	Response to written evidence due
Tuesday, April 30, 2024	Hearing date confirmation
Friday, May 17, 2024	Visual evidence due
Friday, May 17, 2024	Joint Document Book due
Wednesday, May 22, 2024	Hearing