

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: December 24, 2024

CASE NO(S).:

OLT-23-001195

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

Applicant/Appellant:

Subject:

Description:

Reference Number:

Property Address:

Municipality/UT:

OLT Case No.:

OLT Lead Case No.:

OLT Case Name:

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

Applicant/Appellant:

Subject:

Description:

Reference Number:

Property Address:

Municipality/UT:

OLT Case No.:

OLT Lead Case No.:

Heard: December 9, 2024 by video hearing

APPEARANCES:

Parties

Counsel

1685078 Ontario Inc.

J. Alati (*in absentia*)
M. Cook

Town of Caledon

P. Boutis
S. Deer

Caledon Residences Inc.

L. Dean (*in absentia*)
M. Helfand

DECISION DELIVERED BY C. HARDY AND ORDER OF THE TRIBUNAL

[Link to Order](#)

INTRODUCTION AND HISTORY

[1] Located within the Town of Caledon (“Town”) are two parcels of property, being Part 1 of Plan 43R-21080 with a municipal address of 0 Mount Pleasant Road (“Part 1”), and Part 2 of Plan 43R-21080 with a municipal address of 10261 Highway 9 (“lot 22”) (together referred to as the “subject property” / “site”). Part 1 is currently vacant and being used in agricultural production, including field crops and a tree nursery. Lot 22 is currently occupied by a single detached residential dwelling and accessory buildings related to the residential use.

[2] 1685078 Ontario Inc. (“Appellant”) filed applications with the Town for a Zoning By-law Amendment (“ZBA”) and Draft Plan of Subdivision (“Draft Plan”) (together referred to as “applications”) to facilitate the redevelopment of the subject property with a 21-lot residential subdivision. The Town failed to render decisions on the applications, and pursuant to ss. 34(11) and 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (“Act”), the Appellant appealed to the Tribunal.

[3] The applications have a lengthy history, which started with the original applications being filed with the Town prior to July 7, 2008. Following circulation and receipt of comments from agencies, including the Ministry of Transportation (“MTO”) and Nottawasaga Valley Conservation Authority (“NVCA”), the Appellant made a number of revisions to the applications resulting in the proposed ZBA found at **Schedule A** to this Order, and the proposed Draft Plan found at Exhibit 2, Tab 7, Attachment 6.

[4] In 2014, Caledon Residences Inc. had applications for a Draft Plan of Subdivision (“CRI Draft Plan”) and a Zoning By-law Amendment (“CRI ZBA”) relating to its property then known as Part of Lots 26 and 27, Concession 9, Town of Caledon, Regional Municipality of Peel (“CRI lands”). On December 20, 2016, the Town Council adopted the CRI Draft Plan and CRI ZBA, and subsequently, the Plan of Subdivision for the CRI Draft Plan, Plan 43M-2069, was registered.

[5] The appeals were previously the subject of two Case Management Conferences (“CMC”), held before panels differently constituted. On February 22, 2024, the Tribunal held the first CMC wherein it granted Party status to Caledon Residences Inc. and Participant status to John Joyce.

[6] On June 11, 2024, the Tribunal held the second CMC in the proceedings wherein it reviewed and approved a Procedural Order and Issues List, and scheduled a five-day hearing to commence November 4, 2024, which was later reduced to a three-day hearing to commence November 6, 2024.

[7] On consent, the hearing was adjourned, and a three-day hearing was scheduled for December 9, 2024. On September 22, 2024, the Tribunal was advised that the Town had resolved its issues (Issues 2 – 8, inclusive, on the Issues List) and was working through drafting draft plan conditions. On December 6, 2024, the Tribunal was advised that the Town and the Appellant had entered Minutes of Settlement, and as part of that settlement, the Appellant filed a letter withdrawing the Draft Plan appeal. In response to

the Appellant's withdrawal letter, Caledon Residences Inc. requested that the Tribunal allow the Parties to speak to the matter at the commencement of the hearing on December 9, 2024.

SITE CONTEXT

[8] The subject property is 30.174 hectares ("ha") in size and is surrounded by estate residential and agricultural/rural residential uses. The subject property is located southwest of the intersection of Mount Pleasant Road and Highway 9. There are existing estate residential subdivisions on the opposite side of Mount Pleasant Road and south of the subject property on the CRI lands.

[9] The subject property is located in the Oak Ridges Moraine Conservation Plan ("ORMCP") Area, pursuant to which it is designated as Palgrave Estates Residential Community (A Component of the Countryside Area). The Region of Peel Official Plan ("Peel OP") designates the subject property as Estate Residential Community Area with Special Policy (Oak Ridges Moraine) on Schedule "D" Regional Structure. The Town Official Plan ("Town OP") designates the subject property as Policy Area 3 on Schedule "G", Environmental Zones 1 and 2 on Schedule "I", and Palgrave Estate Residential Community on Schedule "P".

[10] Zoning By-law 2006-50, as amended ("ZBL"), zones the subject property as Rural – Oak Ridges Moraine (A2-ORM) and Environmental Policy Area 2 – Oak Ridges Moraine (EPA2-ORM).

PROPOSED DEVELOPMENT AND APPLICATIONS

[11] The subject property has two distinct ownerships. In order for the Appellant to obtain a sufficient number of lots and remain in compliance with minimum lot sizes, lot 22 (the existing residence) which is owned by a different entity than the subject property was included in the applications to increase the size of the subdivision to allow the proposed 21 lots.

[12] The development proposal now before the Tribunal is to create 21 lots, which would accommodate 21 new single detached dwellings on lots ranging in size from 0.6 ha to 1.18 ha (“proposed development”). No new development is proposed on lot 22, which is occupied by an existing single detached dwelling and accessory garage and comprises 10.43 ha in area. The proposed development will be serviced with municipal water and private septic systems.

[13] The majority of the lots in the proposed development will be accessed from an internal street network, with one access to Mount Pleasant Road and a street connection to the CRI lands south of the subject property. The intent is to extend Walter Brown Drive through the proposed development where it will align with the existing McGuire Trail at Mount Pleasant Road.

[14] Lot 22 will retain the existing access from Highway 9.

[15] The proposed ZBA, attached as **Schedule A**, will rezone the subject property from “Rural – Oak Ridges Moraine (A2-ORM)” and “Environmental Policy Area 2 – Oak Ridges Moraine (EPA2-ORM)” to “Estate Residential Exception 657 (RE-657)”, “Environmental Policy Area 1 – Oak Ridges Moraine – Exception 720 (EPA1-ORM-720)”, “Environmental Policy Area 1 – Oak Ridges Moraine (EP1-ORM)” and “Environmental Policy Area 1 – Exception 405 (EPA1-405)”, with site-specific provisions related to *inter alia* lot area, lot frontage, and setbacks.

HEARING

[16] As noted in paragraph [7] above, the Appellant withdrew its Draft Plan appeal immediately prior to the commencement of the hearing. Caledon Residences Inc. was granted Party status to both the ZBA and Draft Plan appeals, however, it only raised issues on the Issues List relating to the Draft Plan appeal.

[17] At the commencement of the hearing, the Tribunal heard submissions from the Parties regarding the Appellant’s intent to withdraw the Draft Plan appeal. Upon the

Tribunal's ruling that it would accept the Appellant's withdrawal, the Tribunal heard further submissions from the Parties regarding Caledon Residences Inc. request that if the Tribunal approves the ZBA, it either issue an interim order or impose a holding symbol ("H") on the proposed ZBA, both of which were contingent upon the Appellant entering into a cost sharing agreement with Caledon Residences Inc.

Draft Plan Withdrawal

[18] Pursuant to a letter from Counsel for the Appellant dated December 6, 2024, the Appellant withdrew its Draft Plan appeal. Counsel for Caledon Residences Inc. submitted that this was a significant change in position and requested that the Tribunal refuse to accept the withdrawal. Caledon Residences Inc. relied upon *Re City of York Official Plan Amendment 105 and Zoning By-law 2171-91 (No. 4)*, 1991 CarswellOnt 6020, 27 O.M.B.R. 57 ("York case"), arguing that the basic proposition set out in the York case was that a Party does not have an absolute right to withdraw an appeal. There is no statutory rule that the Tribunal must accept a withdrawal. The Tribunal may, in exceptional circumstances, refuse a withdrawal.

[19] Caledon Residences Inc. submitted that it became a Party to the appeals for the sole purpose of arguing that a cost sharing condition should be included in the Draft Plan conditions. It argued that when the request for Party status was made at the CMC, neither the Tribunal questioned the request for status on that basis nor did the Appellant or the Town raise any objections. Caledon Residences Inc. argued that the withdrawal removes its right to state a case and be heard, and that they have exchanged evidence and are present and ready to proceed. The Tribunal should refuse the withdrawal in order to offer the best opportunity for a fair, just, and expeditious resolution of the merits of the hearing, as opposed to an avoidance of the merits, which it argued is the result of the Appellant's withdrawal.

[20] The Appellant acknowledged the frustration for Caledon Residences Inc. resulting from the withdrawal of the Draft Plan appeal, however, argued that an

appellant is entitled to withdraw its appeal and the Act specifically contemplates withdrawals in relation to draft plan appeals. Third parties do not have appeal rights relating to draft plans. The Appellant and the Town reached an agreement on the issues relating to the Draft Plan (including the Draft Plan conditions) and ZBA appeals on December 2, 2024, and the settlement agreement was fully executed on December 6, 2024. Immediately following execution of the Minutes of Settlement, the Appellant notified the Parties and the Tribunal of the settlement and the withdrawal of the Draft Plan appeal. The Appellant reached a resolution with the Town to move forward on the Draft Plan without a contested hearing and argued that the Tribunal should accept the withdrawal. In reference to the York case, the Appellant argued that there were no exceptional circumstances which would warrant the Tribunal refusing to accept the withdrawal of the Draft Plan appeal. The Town concurred with the submissions made by the Appellant.

[21] Upon considering the submissions and arguments of the Parties, the Tribunal accepted the Appellant's withdrawal of the Draft Plan appeal. The Tribunal distinguished the York case wherein the Ontario Municipal Board considered the withdrawal of an appeal with an "exceptional fact situation(s)" under a different section of the Act. The Tribunal was not presented with any evidence allowing it to conclude that the circumstances in this case rise to the level of exceptional. While the withdrawal results in Caledon Residences Inc. no longer having issues to raise in the appeal, the Tribunal finds it would be unfair to refuse the withdrawal, thereby penalizing the Appellant and the Town who have worked diligently together to reach a resolution. The time and cost incurred by Parties in preparing for a hearing can assist in scoping and/or resolving issues and is part of the process in every proceeding. Whether a matter proceeds to a full hearing of the merits or settles, the preparation leading up to a hearing is an important part of the process. The Tribunal finds that the most fair, just, and expeditious way to proceed is to accept the Appellant's withdrawal of the Draft Plan appeal.

Request re Cost Sharing of Caledon Residences Inc.

[22] Subsequent to the Tribunal's ruling accepting the withdrawal of the Draft Plan appeal, the only remaining matter before the Tribunal was the ZBA appeal. The issues raised by the Town on the Issues List related to the ZBA appeal were resolved prior to the hearing, pursuant to the terms of settlement entered into with the Appellant. Caledon Residences Inc. raised three issues on the Issues List relating to cost sharing as a condition of Draft Plan approval, which, following the withdrawal of the Draft Plan appeal, was no longer before the Tribunal.

[23] Following the Tribunal's ruling on the withdrawal, Caledon Residences Inc. argued that its request had changed given the Tribunal's ruling and now it was requesting that the Tribunal either:

- withhold its final order on the ZBA pending the finalization of a cost sharing agreement between the Appellant and Caledon Residences Inc.; or
- impose a H on the ZBA, which could be lifted once a cost sharing agreement was finalized between the Appellant and Caledon Residences Inc.

[24] Caledon Residences Inc. argued that the alternative requests are the most appropriate and fair way to proceed as it would not introduce any new evidence and would not result in any prejudice to the other Parties as the witnesses had already responded to the cost sharing issue. Further, had the Appellant and the Town filed settlement materials 10–15 days in advance, as was the normal course, Caledon Residences Inc. would have had an opportunity to bring a motion to amend the Issues List and add a cost sharing issue to the Issued List relating to the ZBA appeal.

[25] The Appellant disagreed that there would be no prejudice to granting the request of Caledon Residences Inc. as its sole focus to date had been concerns with the Draft

Plan and it had never raised any issues or concerns relating to the ZBA appeal. The Appellant argued that it was open to Caledon Residences Inc. to include issues on the Issues List relating to the appropriateness of imposing a H on the ZBA to address cost sharing, and it did not do so. To allow Caledon Residences Inc. to add the issue at the commencement of the hearing is inappropriate and prejudicial when none of the Parties have come to the hearing prepared to address this new issue.

[26] Following the consideration of the submissions of the Parties, the Tribunal denied Caledon Residences Inc.'s requests to either withhold its final order pending the entering into of a cost sharing agreement between Caledon Residences Inc. and the Appellant or consider the addition of the H to the ZBA. The approval of the ZBA, on an interim basis, conditional solely upon the entering into of a cost sharing agreement between the Parties is tantamount to requiring two private parties to enter into an agreement. Approval of a ZBA on this basis is not the appropriate forum to address a cost sharing agreement and is outside of the Tribunal's jurisdiction.

[27] The Tribunal did not find the argument that the normal course was for a Party to file settlement materials 10-15 days in advance persuasive. The Tribunal encourages Parties to settle disputes if possible and settlements do not follow a set timeline. In fact, many settlements are solidified on the eve of, or morning of, the commencement of a hearing, or even during the course of the hearing itself.

Hearing to Consider the ZBA Settlement Proposal

[28] Following the Tribunal's acceptance of the Appellant's withdrawal of the Draft Plan appeal, the only remaining matter before the Tribunal was the ZBA appeal.

[29] The Appellant and the Town jointly requested that the Tribunal allow the appeal in part and approve the ZBA, entered as Exhibit 4 in principle. The Appellant explained that there was an error in the mapping of the draft provided in the materials and once it was rectified, the Tribunal would be provided with the final version of the ZBA. Pursuant

to the Tribunal's direction, the Appellant provided the final draft ZBA, with the revised mapping, on December 16, 2024, which is attached as **Schedule A** to this Order.

[30] The Tribunal had the benefit of testimony and opinion evidence from Robert Russell, in land use planning, and Brandon Bradt, in transportation planning. Mr. Russell and Mr. Bradt were both qualified by the Tribunal to provide opinion evidence in their respective areas of expertise on consent of the Parties.

[31] Mr. Russell provided a general overview and policy analysis in support of the proposed development. He opined that the proposed ZBA, which will facilitate the proposed development, satisfies all requisite legislative tests, and overall, is representative of good planning and is in the public interest.

[32] Mr. Russell reviewed the relevant policies and opined that the proposed development has regard for matters of provincial interest, in particular ss. 2 (a) and (p) of the Act, as the Environmental Impact Study demonstrated that ecological areas were protected, and the proposed development would advance growth on lands designated for development.

[33] With respect to the Provincial Planning Statement, 2024 ("PPS") Mr. Russell highlighted policy 2.6.1(c), which permits residential development on rural lands if there is an available regional water supply and the provision of appropriate sewage services, which in this case is provided through the use of individual septic systems on each lot. Mr. Russell further addressed the concern relating to well water contamination raised by Mr. Joyce in his Participant status request. Mr. Russell explained that the impact to ground water was a key consideration and the Hydrogeological and Nitrate Assessment Report concluded that the existing nitrate levels exceeded the provincial limit due to the current agricultural use on the subject property. Following the proposed development, Mr. Russell noted that levels would decrease with the cessation of agricultural uses and the use of the future septic systems. As such, it was his opinion that the ZBA would meet the policies in the PPS and be consistent with it.

[34] Mr. Russell opined that the ZBA conforms with the Greenbelt Plan and the ORMCP. The subject property is located in an area that is excluded from many policies in the ORMCP and allows residential development. The ORMCP policies that remain applicable require that development not be an impediment to ecological connections and ensure the protection of natural heritage features. Mr. Russell explained that lots 1-21 do not contain key natural heritage features nor ecological connections. Lot 22 does contain some of these features, however, the proposed development will not disturb lot 22, so the features will be protected.

[35] Mr. Russell opined that the ZBA is consistent with the Peel OP and Town OP. Mr. Russell spent time explaining that the Town OP contains strict density policies in order to maintain the rural character in the area. In particular, policy 7.1.6.4 would limit the maximum density to 26 units per 40.5 ha, plus density bonuses. The total area of the subject property is 30.174 ha, which equals a maximum permitted density of 19 lots. Policy 7.1.9.12 allows for bonus density for lands that are “suitably protected, managed or reforested” and for every four ha that is protected, managed, or reforested, one additional residential lot is permitted. The proposed development includes 12.18 ha of reforestation area, which increases the maximum density to 22 lots.

[36] Mr. Russell opined that the ZBA, which facilitates the proposed development, represents good planning in the public interest and recommended that the Tribunal allow the appeal in part and approve the proposed ZBA.

[37] Mr. Bradt provided brief submissions explaining how the issue raised by the MTO was resolved. The MTO raised a concern that the typical access spacing from an intersection was 400 metres, however, the proposed development provides approximately 200 metres from Highway 9 to McGuire Trail. Mr. Bradt explained that the minimum access spacing for private roads is 45 metres (which the proposed development exceeds), which is a more appropriate comparison since the development proposes a small number of lots and is not expected to be a major traffic generator. The

Appellant worked with the MTO to explain the rationale and the MTO concurred with the Appellant's position and removed its concerns relating to the access location.

[38] Based on the uncontroverted land use planning evidence of Mr. Russell, the Tribunal is satisfied that the proposed ZBA, which will facilitate the proposed development, provides for the efficient use of existing land and infrastructure, with a use that is compatible with existing land uses in the area. The proposed development anticipates the improvement of nitrate levels post development and ensures the protection of natural heritage features and ecological connections.

[39] The Tribunal accepts the opinions of Mr. Russell and Mr. Bradt that the proposed ZBA satisfies all statutory tests and represents good planning in the public interest. The Tribunal finds that the proposed ZBA is consistent with provincial and regional planning policies and conforms to relevant Town policies.

ORDER

[40] **THE TRIBUNAL ORDERS THAT** the appeal is allowed in part and directs the municipality to amend By-law 2006-50, as amended, as set out in **Schedule A** to this Order. The Tribunal authorizes the municipal clerk of the Town of Caledon to assign a number to this By-law for record keeping purposes.

"C. Hardy"

C. HARDY
VICE-CHAIR

Ontario Land Tribunal

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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 A

THE CORPORATION OF THE TOWN OF CALEDON BY-LAW NO. 2024-XX

Being a by-law to amend Comprehensive Zoning By-law 2006-50, as amended, with respect to Part Lots 28 and 29, Concession 9 (Albion) designated as Part 1 on Plan 43R-36501 and Part Lot 28, Concession 9 (Albion), designated as Part 2 on Plan 43R-21080; Town of Caledon, Regional Municipality of Peel, municipally known as 0 Highway 9.

WHEREAS the Ontario Land Tribunal deems it desirable to amend Town of Caledon Comprehensive Zoning By-law 2006-50, as amended, pursuant to Section 34 of the Planning Act, R.S.O. 1990;

Now therefore the Ontario Land Tribunal hereby enacts as follows:

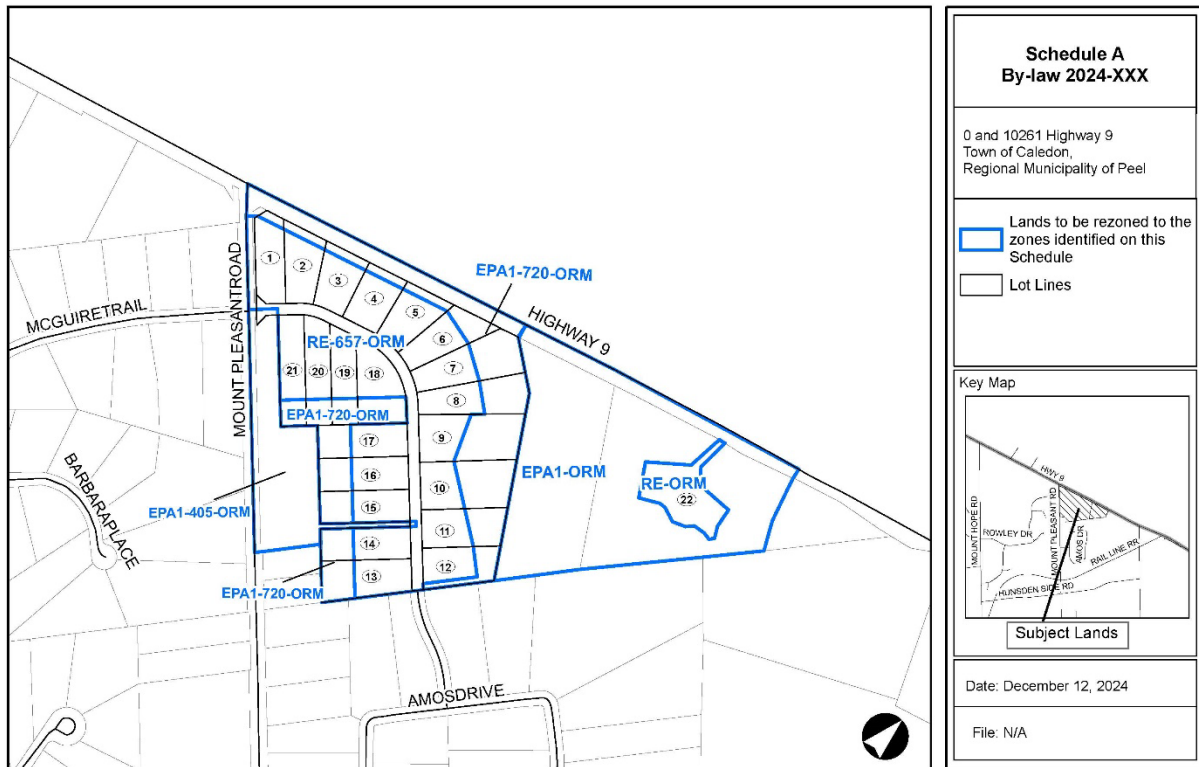
- The following is added to Table 13.1:

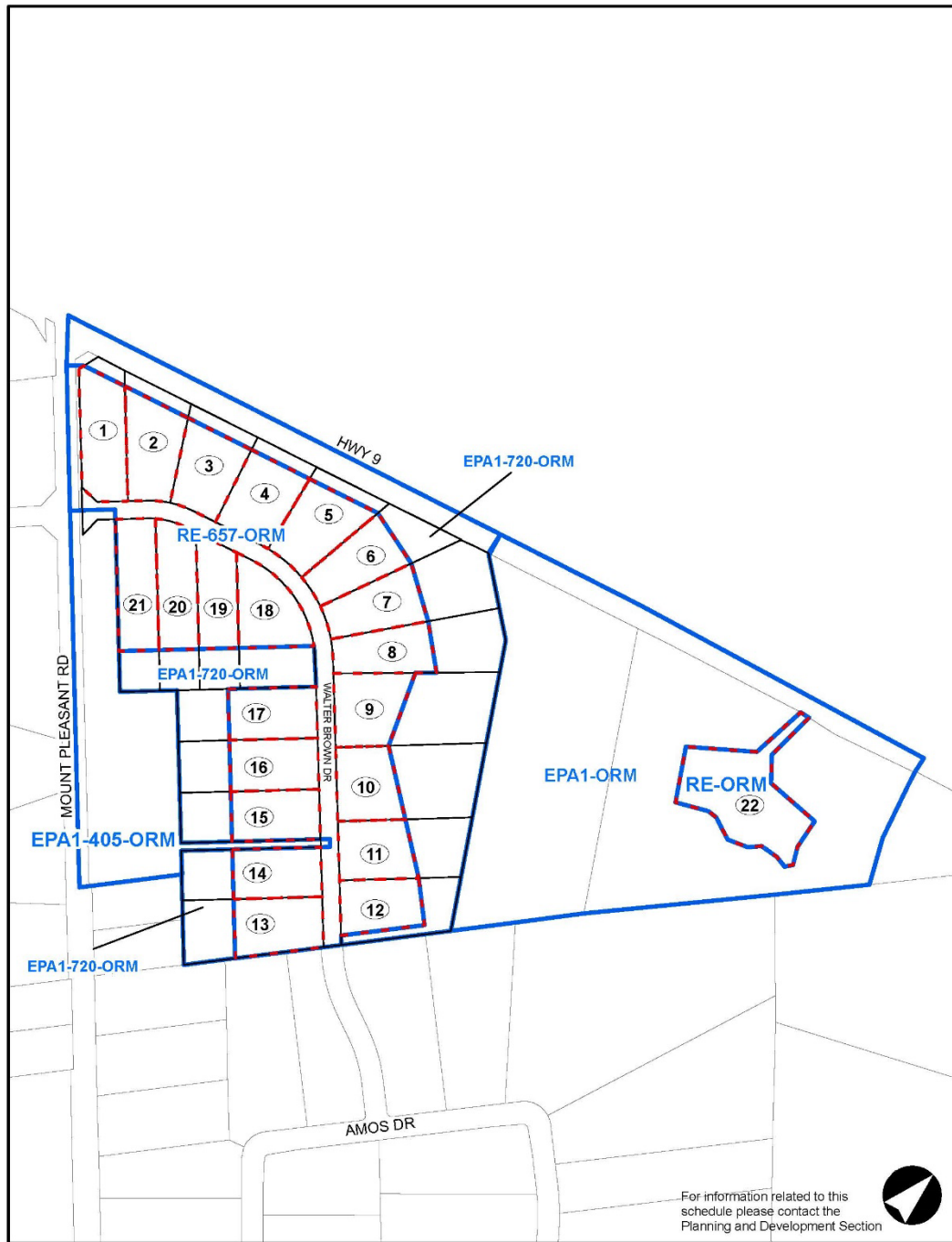
Zone Prefix	Exception Number	Permitted Uses	Special Standards
RE	657	- Apartment, Accessory - Day Care, Private Home - Dwelling, Detached - Home Occupation (1)	<i>Lot Area (minimum)</i> 0.6 ha <i>Lot Frontage (minimum)</i> 38 m <i>Yard, Front (minimum)</i> 15 m <i>Yard, Interior Side (minimum)</i> 5 m <i>Parking Space Setback (minimum)</i> 3 m <i>Driveway Width (maximum)</i> 12 m <i>Entrance Width (maximum)</i> 7.5 m Site Plan Control In addition to the provisions of this By-law no persons shall within any RE-657 Zone use, alter or erect any building structure except in accordance with a site plan approved pursuant to the provision of Section 40 to the Planning Act, 1983. Building and Structure Location All buildings and structures, accessory buildings and structures, driveways, parking areas, fences, swimming pools and septic tile fields shall only be located with the Structure Envelope as shown on Zone Map S.E. 47. The minimum setback measured from the rear façade of a dwelling to the rear limit of a structure envelope shall be 7.5 m. The minimum setback measured from the side façade of a dwelling to the side limit of a structure envelope shall be 5.0 m.
EPA1-ORM	720	- Environmental Management	No fencing shall be permitted within this zone.

{DH 02437853}

2. Schedule "A", Zone Map 55 of By-law 2006-50, as amended is further amended for Part of Lot 28 and 29, Concession 9 (Albion) designated as Part 1 of Plan 43R-36501 and Part Lot 28, Concession 9 (Albion) designated as Part 2 on Plan 43R-21080, Town of Caledon, Regional Municipality of Peel, from Rural – Oak Ridges Moraine (A2-ORM) and Environmental Policy Area 2 – Oak Ridges Moraine (EPA2-ORM) to Estate Residential – Exception 657 (RE-657), Environmental Policy Area 1 – Oak Ridges Moraine – Exception 720 (EPA1-ORM-720), Environmental Policy Area 1 – Oak Ridges Moraine (EP1-ORM) and Environmental Policy Area 1- Exception 405 (EPA1-405) in accordance with Schedule "A" attached hereto.
3. Schedule "B" S.E. Map 47 attached hereto, is hereby added to Schedule "B", Structure Envelope (SE) Maps of By-law 2006-50, as amended, for the lands legally described as Part Lots 28 and 29, Concession 9 (Albion) designated as Part 1 on Plan 43R-36501 and Part Lot 28, Concession 9 (Albion), designated as Part 2 on Plan 43R-21080; Town of Caledon, Regional Municipality of Peel.

This by-law shall come into effect on the day of approval per an Order from the Ontario Land Tribunal dated _____ (OLT case No. OLT-23-001195).





For information related to this schedule please contact the Planning and Development Section

