

Divisional Court File No.
OLT Case No. OLT-23-000360

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

B E T W E E N:

MISTRAL DEVELOPMENT INC.

Moving Party/Appellant

And

MUNICIPALITY OF PORT HOPE

Responding Parties/Respondents

**NOTICE OF MOTION FOR LEAVE TO APPEAL OF MISTRAL DEVELOPMENT INC.
FROM AN ORDER OF THE ONTARIO LAND TRIBUNAL**

The Moving Party, Mistral Development Inc, will make a motion to the Divisional Court on a date to be fixed by the Registrar at 130 Queen Street West in Toronto, ON M5H 2N5.

PROPOSED METHOD OF HEARING: The motion is to be heard

- ☐ In writing under subrule 37.12.1 (1) because it is *(insert one of on consent, unopposed or made without notice)*;
- ☒ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☐ By video conference.

THE MOTION IS FOR:

1. An Order granting Leave to Appeal to the Divisional Court pursuant to section 24 of the Ontario Land Tribunal Act, SO 2021, c. 4, Sch. 6, from the Decision of Member Aaron Sauve issued on April 14, 2025 and corrected on April 24, 2025

("Tribunal's Decision"). The Tribunal's Decision dismisses the Appellant's Zoning By-law Amendment and Draft Plan of Subdivision appeals pursuant to sections 34(11) and 51(34) of the Planning Act, RSO 1990, c. P.13, respectively, on the basis that the Zoning By-law Amendment and Draft Plan of Subdivision ("Instruments") do not meet the *no negative impacts* test of the Provincial Planning Statement, 2024 ("PPS") and are not consistent with the PPS.

2. An Order that the Tribunal's Decision be stayed until the conclusion of this appeal;
3. The costs of this motion on a partial indemnity basis;
4. In the alternative, that the parties bear their own costs; and
5. Such further and other relief as this Honourable Court may deem just.

GROUND FOR THE MOTION:

6. There is good reason to doubt the correctness of the Tribunal's Decision and that the Decision raises questions of law of sufficient importance to merit the attention of the Divisional Court on the basis that Member Sauve erred in law, including by incorrectly applying the *no negative impacts* test of the Provincial Planning Statement, 2024 ("PPS") for the following reasons by:
 - a. forging a new threshold obligation of the *no negative impacts* test requiring landowners to conduct testing to an undetermined area of land outside of the lands where development or site alteration is proposed, in order to demonstrate that the *no negative impacts* test has been met;
 - b. proposing the need for unachievable testing and assessment of adjacent lands that would require illegal trespass onto private property in order to meet the *no negative impacts* test;
 - c. failing to correctly apply the *no negative impacts* test pursuant to section 4.1.5(e) of the PPS; and
 - d. incorrectly applying the life science area of natural and scientific interest ("ANSI") portions of the *no negative impacts test* to an earth science ANSI.
7. The issues raised by Member Sauve in the Decision are substantively and generally important because:

- a. Landowners throughout Ontario will have to apply the new threshold requirement of the *no negative impacts* test in all instances where site alteration or development of lands are proposed and the *no negative impacts* test is required;
 - b. The new threshold requirement will impact countless various types of land development applications throughout Ontario and will impose unachievable thresholds to site alteration and development;
 - c. Landowners proposing to alter lands within significant wetlands, woodlands, valleylands, wildlife habitat, coastal wetlands, airports or where municipal sewage services and municipal water services are not available will also need to meet the new threshold requirement of the *no negative impacts* test;
 - d. It is not good planning pursuant to the *Planning Act* to impose a new and unachievable threshold to the *no negative impacts* test; and
 - e. The Decision sets an obscure precedent that landowners must meet in order to alter or develop lands, and creates confusion and controversy relating to good planning and development in the Province of Ontario.
8. The Decision is incorrect and unreliable. It included other errors such as:
- a. Mixing up which lawyers are counsel for the Municipality of Port Hope and which were counsel for the Appellant,
 - b. Misspelling the names of counsel for the Appellant, even though they had appeared before the Member on this matter previously;
 - c. Relying on Affidavits which were in support of the Appellant's Response to Motion in making its determination; and
 - d. Referring to the wrong name for the Appellant.
9. It is desirable that leave to appeal be granted as the matters involved are of general importance to the development of the law and the administration of justice.

10. Rules 61.03 and 63.02 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 and s. 24 of the *Ontario Land Tribunal Act, 2021*, SO 2021, c. 4, Sch. 6.; and

11. Such further and other grounds that counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used in the hearing of the motion:

1. Reasons for Decision of Aaron Sauve, issued on April 14, 2025 and corrected on April 24, 2025;
2. Evidence filed by the Appellant and the Municipality of Port Hope before the Ontario Land Tribunal on this hearing bearing OLT Case No. OLT-23-000360;
3. Affidavits to be sworn and the exhibits attached; and,
4. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

Dated April 29, 2025

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MUNICIPALITY OF PORT HOPE
Moving Party

- and -

MISTRAL DEVELOPMENT INC.
Respondent

ONTARIO

**SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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