

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 2, 2024

CASE: 2023-00629N

Citation: Taplin v. York Region Vacant Land Condominium Corporation No. 1002, 2024 ONCAT 51

Order under section 1.41 of the *Condominium Act, 1998*.

Member: Marc Bhalla, Member

The Applicant,

Carol Taplin

Self-Represented

The Respondent,

York Region Vacant Land Condominium Corporation No. 1002

Represented by Bharat Kapoor, Counsel

Submission Dates: March 11, 2024 to March 29, 2024

DISMISSAL ORDER

- [1] The Applicant filed a nuisance case with the Condominium Authority Tribunal (CAT). They seek an order to allow the planting of 3 trees to address concerns about privacy, noise, and light.
- [2] The case proceeded to Stage 2 - Mediation on February 5, 2024. From the outset of Stage 2, the Respondent raised concern about whether the case was within CAT jurisdiction. Still, the parties took part in mediation to try to resolve their issues. They were unable to do so.
- [3] As the parties were unable to settle the case, the Respondent brought a motion requesting that I determine the jurisdictional issue. The parties provided written submissions in respect of the motion.
- [4] The Applicant claims they are experiencing noise and light nuisance. To address it, they would like trees planted at a corner between their property and a major road. The Applicant states that all other properties serviced by the Respondent condominium have this landscaping in place.

- [5] The Applicant frames the landscaping sought as a noise abatement measure. They propose it to remedy traffic noise emanating from the major road. The Applicant also has related concerns about lighting, from both nearby streetlights and from the headlights of the heavy traffic on the major road, which the trees would address.
- [6] The Respondent believes the Applicant does not really have a nuisance concern. It claims the Applicant filed the case as they desire landscaping. The Respondent's position is the case falls outside of the CAT's jurisdiction.
- [7] The CAT's jurisdiction over noise and lighting comes from section 117(2) of the *Condominium Act, 1998*. It relates to allegations of unreasonable noise or light that create a nuisance, annoyance, or disruption.
- [8] The noise in question is ordinary traffic noise, as would be expected on a major road. The lighting concern stems from vehicle lights and streetlights. The Applicant does not claim the Respondent is creating or permitting the problem. They do not suggest the noise or light is unreasonable. Rather, the Applicant presents the matter as inequitable – as others have the benefit of the trees and landscaping they do not.
- [9] The Applicant is not claiming any particular individual(s) are causing the noise or lighting concern. They describe noise and lighting issues which appear largely beyond the condominium's control. The Applicant seeks a specific outcome, the planting of trees and related landscaping at the corner near their property. They feel the request is reasonable and "consistent with the design of the Community". While I appreciate the Applicant's concerns and desired outcome, this matter is not within the CAT's jurisdiction.
- [10] The CAT is dismissing this case because:
1. There is no allegation of unreasonable noise or lighting giving rise to a nuisance, annoyance, or disruption. The case is beyond the Tribunal's jurisdiction.
 2. Under Rule 19.1(c) of the CAT's Rules of Practice, the CAT can dismiss a case where a case is about issues that the CAT has no legal power to hear or decide.
- [11] The Respondent also sought the recovery of costs for taking part in the case and bringing the motion. Costs are discretionary. I am not convinced the Applicant brought this case with ill-intent. They were self-represented and may not have

appreciated the limits of CAT jurisdiction. In this circumstance, I find it appropriate for each party to bear their own costs.

ORDER

[12] The Tribunal orders the case dismissed.

Marc Bhalla
Member, Condominium Authority Tribunal

Released on: April 2, 2024