

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: October 06, 2023

CASE NO(S): OLT-22-003368
(Formerly PL200391)

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	ADM Agri-Industries Company
Appellant:	Ed Boyd and Gloria Campbell
Appellant:	Hanson Development Group
Appellant:	Midland Bay Estates Inc.; and others
Subject:	Proposed Official Plan Amendment No. MD-OP-1901
Municipality:	Town of Midland
OLT Case No.:	OLT-22-003368
Legacy Case No.:	PL200391
OLT Lead Case No.:	OLT-22-003368
Legacy Lead Case No.:	PL200391
OLT Case Name:	ADM Agri-Industries Company v. Midland (Town)

Heard: September 01, 2023 by written motion

APPEARANCES:

Parties

Counsel

Town of Midland ("Town")

Alexandra Whyte

Midland Bay Estates Inc. ("MBE")

Eric Davis

County of Simcoe ("County")

No appearance

DECISION DELIVERED BY T.F. NG AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The matter before the Tribunal pertains to the 2019 Official Plan (“new OP/OP/2019 OP”) adopted by the Town of Midland (“Town”) which OP had been approved by the County of Simcoe (“County”).

[2] The Town’s Motion for Scoping and Partial Approval of the OP was granted in part by the Tribunal on February 24, 2021 and by a further order of October 01, 2021, the Tribunal approved part of the OP as modified except for policies and schedules on Appendix 2 and site specific or area specific identified lands in Appendix 3 attached to the order.

[3] The Appellant, Midland Bay Estates Inc. (“MBE”) is seeking approval of the settlement proposal after resolving its appeal with the Town (“OP Appeal”). Eric Davis acts on behalf of MBE.

[4] MBE’s Notice of Motion dated August 11, 2023 is supported by the affidavit of Jamie Robinson sworn August 11, 2023 (“Robinson Affidavit”). Mr. Robinson is an experienced and qualified Registered Professional Planner.

[5] Counsel for the Town, Alexandra Whyte has written to the Tribunal, indicating that the Town supports MBE’s Motion.

[6] After reading the Motion materials, the appeal documents and the uncontested opinion evidence of Mr. Robinson, the Tribunal allows the Motion.

Subject Lands

[7] The Subject Lands are located at 251, 311 and 353 Fuller Avenue in Midland and legally described as Part Lot 111 and 112, Concession 2 East of Penetanguishene Road, Town of Midland, County of Simcoe. The Subject Lands comprise 21.9 hectares

(54 acres) of vacant land with 675 metres of frontage on Fuller Avenue and 495 metres of frontage on Gawley Drive, both of which are municipally owned and maintained roads.

[8] The County Official Plan (“COP”) designates the Subject Lands as “Settlements”.

[9] The old 2002 Town OP (“2002 OP”) designates the Subject Lands as “Residential District”.

[10] The new OP proposes to designate the Subject Lands as primarily “Natural Heritage” and a very small portion as “Neighbourhood Residential”.

[11] The Subject Lands are currently zoned Residential (R1-1) and Open Space (OS) in accordance with the Town’s Comprehensive Zoning By-law No. 2004-90, as amended (“ZBL”).

[12] The ZBL implements the planned function of the Subject Lands and permits the development of the subdivision that has maintained Draft Plan approval status since 2004. It is noted that the lands were site specifically zoned to implement the Draft Plan Approval by Amending Zoning By-law No. 2010-72.

SETTLEMENT

[13] MBE and the Town have reached a settlement in relation to the OP Appeal, involving site-specific modifications to the OP, as outlined in Exhibit “D” to the Robinson Affidavit (the “Proposed Modifications”). Specifically, the Proposed Modifications include:

1. In Schedule “A” to the OP, removing the Greenlands designation and modifying the limits of the Delineated Built Boundary;

2. In Schedule “B” to the OP, removing the Greenlands designation and designating the Subject Lands as Neighbourhood District;
3. In Schedule “C” to the OP, removing the Natural Heritage Designation and designating the Subject Lands as Neighbourhood Residential and Open Space; and,
4. Modifying subsection 7.21(f)(1) of the OP to permit modifications to the Open Space designation without amendment to the OP. This is required as the detailed design of the Stormwater Management Facilities could increase the size of the Stormwater Block.

[14] The approval of the Proposed Modifications to resolve the OP Appeal are minor and do not raise any broader concerns.

[15] As outlined in the Robinson Affidavit, the Proposed Modifications have appropriate regard for matters of provincial interest as set out in Section 2 of the *Planning Act* (“Act”), they are consistent with the Provincial Policy Statement, 2020 (“PPS”), they conform to the Growth Plan for the Greater Golden Horseshoe 2020 (“Growth Plan”), the COP, and the OP, and represent good land use planning.

Opinion Evidence

[16] Mr. Robinson’s uncontested opinion is that the settlement above represents good planning, is in the public interest and should be approved.

Section 2 of the *Planning Act*

[17] Section 2 of the Act prescribes a list of non-exhaustive criteria that the Council of a local municipality, a local board, and the Tribunal must have regard to in carrying out their responsibilities under the Act.

[18] The Tribunal agrees with Mr. Robinson that given the scope of the appeal, the Neighbourhood Residential and Open Space designations that are proposed for the property have regard to the matters of provincial interest, specifically s. 2(p) the appropriate location for growth and development. The Tribunal finds that the Subject Lands are located within the settlement area, and have Draft Plan of Subdivision approval and are an appropriate location for growth and development.

Provincial Policy Statement, 2020 (“PPS”)

[19] The PPS applies to all decisions in the exercise of any authority in the Province of Ontario that affects a planning matter. It provides policy direction on matters of provincial interest related to land use planning/development and planning decisions shall be consistent with the PPS.

[20] In the context of the PPS, the Subject Lands are within a Settlement Area. The PPS identifies that Settlement Areas are to be the focus of growth and development (s. 1.1.3).

[21] The Subject Lands are capable of being serviced by full municipal water sanitary and stormwater services which is the preferred form of servicing outlined in the PPS.

[22] The Tribunal agrees with Mr. Robinson that the proposed Neighbourhood Residential designation and Open Space designation on the Subject Lands are consistent with the PPS which states that settlement areas shall be the focus of growth and development, and support a form of development, that will be serviced by both municipal water and sanitary sewers, which is the preferred form of servicing contemplated by the PPS. The Tribunal finds the proposed designations on the Subject Lands consistent with the PPS.

The Growth Plan

[23] The Growth Plan provides a foundation for a long-term growth management

approach for the Greater Golden Horseshoe. The Growth Plan has policies that guide decisions on a wide range of issues including transportation, infrastructure planning, land use planning, urban form, housing, natural heritage and resource protection. Any decision made under the Act by a municipality shall conform with the Growth Plan. In accordance with the Growth Plan, the Subject Lands are located within a Primary Settlement Area of the Town.

[24] Section 2.2.6 of the Growth Plan requires municipalities to implement housing choice and provide a range and mix of housing options and densities through appropriate OP policies and designations.

[25] Mr. Robinson stated that the Subject Lands are within the Town settlement area and have been draft approved for the proposed subdivision. The proposed designations implement the Growth Plan and permit residential development in a settlement area in a manner consistent with a draft approved subdivision.

[26] The Tribunal finds that the proposed designation of Neighbourhood Residential and Open Space conforms with the Growth Plan policies on the provision of a range and mix of housing options and density.

County of Simcoe Official Plan (“COP”)

[27] Mr. Robinson stated that the COP designates the Town as a Primary Settlement Area. Section 3.5 of the COP discusses the importance of promoting an efficient use of land and providing a mix and range of housing types and densities to create both healthy settlements and communities. Section 3.5.7 of the COP outlines the growth management concept of the COP and states that residential uses shall be developed within a settlement area along with other land uses set out in the COP.

[28] Section 3.1.1 of the COP directs growth to settlement areas with a particular focus of growth being directed to primary settlement areas.

[29] In Mr. Robinson's opinion, the proposed designation of Neighbourhood Residential and Open Space conforms with the policy direction of the COP and supports the direction of the COP to direct growth to settlement areas.

[30] The Tribunal notes that the primary settlement areas are to be developed as complete communities and the local official plans shall conform to the COP. The Tribunal finds that the COP directs most growth to the settlement areas and the proposed designations of the Subject Lands conform with the COP.

Town Official Plan ("OP")

[31] The OP (which came into effect on February 19, 2021) reflects the Provincial and COP policy direction of planning for growth and development within the primary settlement area of Midland and requires development to be on full municipal services.

[32] Mr. Robinson stated that section 2.2 of the OP sets out the urban structure for the Town to plan for and manage growth. Neighbourhood Districts are the areas of existing and planned residential neighbourhoods. Within Neighbourhood Districts, there are two residential land use designations – The Neighbourhood Residential and Shoreline Residential designations.

[33] Section 2.2 (c) also identifies the Municipal Boundary for the Town which coincides with the identified Settlement Area Boundary. As such, the entire Town has been identified as a Settlement Area and is an area where ongoing development is to be considered throughout the Town.

[34] In the OP, the Subject Lands were primarily proposed to be designated as "Natural Heritage" and a very small portion as "Neighbourhood Residential" on Schedule "C" – Land Use to the OP. On Schedules "A" and "B" the Subject Lands were proposed as "Greenlands". Mr. Robinson opined that this represented a down designation from the 2002 OP and did not acknowledge the planned function, the

existing development approvals, or site specific zoning that exists on the Subject Lands. The down designation of the Subject Lands is the focus of the OP Appeal.

[35] Mr. Robinson emphasized that the proposed “Neighbourhood Residential” and “Open Space” designations conform with the policy direction contained within the OP and reflect the approved zoning and Draft Plan approval on the Subject Lands. The Neighbourhood Residential designation is expected to experience modest change and accommodate compatible development in keeping with the character of these areas. The Neighbourhood Residential designation permits a mix of low and mid-rise residential uses, neighbourhood-oriented commercial uses and local institutional uses such as schools and places of worship amongst other uses. The OP sets out that Zoning By-law Amendments would be required to implement OP policies to allow for appropriate locations for low and mid-rise residential uses. The Zoning of the Subject Lands is already approved in this regard through site specific Zoning By-law No. 2010-72, which has been consolidated into the ZBL.

[36] The “Open Space” designation allows for active and passive recreation and conservation uses as well as storm water management facilities. Further, accessory commercial and residential uses may be considered where deemed appropriate and supportive of the primary recreational use. The proposed storm water management facility is to be located within the Open Space designation.

[37] The proposed development of the Subject Lands enabled by the Draft Approved Subdivision corresponds with the proposed designations of “Neighbourhood Residential” and “Open Space” and represents orderly development as it provides a logical progression of development within the Settlement Area. The proposed designations conform to the growth management framework of the OP.

[38] Mr. Robinson opined, and the Tribunal agrees, that the proposed designations of “Neighbourhood Residential” and “Open Space” conform with the OP in terms of the planned function of the area and is in the public interest as the proposed lots are in keeping with the character of the existing lots in the area.

[39] The Tribunal acknowledges that the OP provides policies intended to properly direct growth within a logical and coherent urban structure (s. 2.1(d)). The Tribunal finds that the proposed designations are in accord with the guiding principles and conform to the OP.

FINDINGS/DECISION

[40] The Tribunal concurs with the sole uncontradicted opinion evidence of Mr. Robinson and his conclusion. The Tribunal agrees with Mr. Robinson and finds that the designation of the Subject Lands to “Neighbourhood Residential” and “Open Space” as reflected in Exhibit “D” in his affidavit represents good planning and is in the public interest for the following reasons:

1. the recommended designations reflect the planned function of the Subject Lands and can be serviced by municipal infrastructure;
2. the recommended designations reflect the approved site-specific zoning on the Subject Lands and will facilitate the draft approved subdivision;
3. the recommended designations are consistent with the PPS, conform with the Growth Plan, and conform with the COP and the land use concept of the OP.

[41] The revised wording provides clarification of s. 7.21(f)1 to permit the Midland Bay Estates Draft Plan of Subdivision to continue and the Subject Lands to be developed in accordance with the draft plan approval without the requirement for a further Environmental Impact Study or amendment to the Plan. Also, refinements to the Open Space designation shall not require an amendment to the Plan.

[42] The objective is the provision of a range of residential unit types on the Subject Lands. The settlement will accommodate an appropriate market-based range and mix of residential types. The settlement will support housing choice through the achievement

of the minimum intensification and density targets including additional housing (s. 2.2.6 of the Growth Plan).

[43] The Tribunal finds that the settlement and the proposed designations have appropriate regard to the matters of provincial interest set out in s. 2 of the Act, are consistent with the PPS, conform with the policies in the Growth Plan, the COP, the OP, represent good planning and in the public interest.

ORDER

[44] The Tribunal orders that Midland Bay Estates Inc.'s Motion is granted, the Appeal is allowed in part and the Official Plan for the Town of Midland is modified as follows, and as modified is approved.

1. That the designations in Schedules "A", "B" and "C" of the 2019 Town Official Plan with respect to the property known municipally as 251, 311 and 353 Fuller Avenue, be modified in accordance with Schedules "A", "B" and "C" attached as **Attachment 1** hereto.
2. That subsection 7.21(f)1 of the 2019 Town OP be modified in accordance with Schedule "D" attached as **Attachment 2** hereto; and,

3. That the balance of Midland Bay Estates Inc.'s appeal of the 2019 Town Official Plan be dismissed.

“T.F. Ng”

T. F. NG
MEMBER

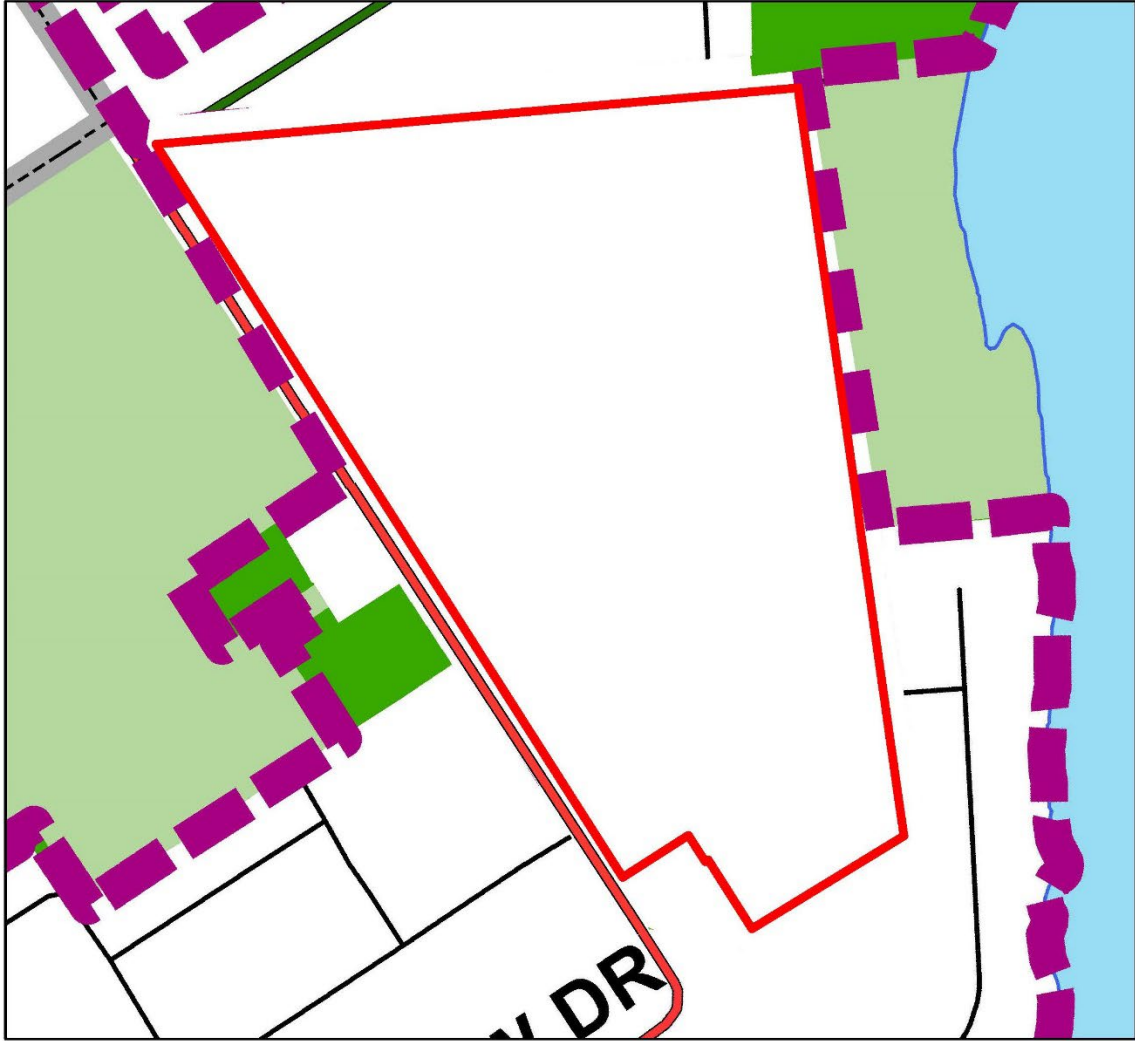
Ontario Land Tribunal

Website: 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.

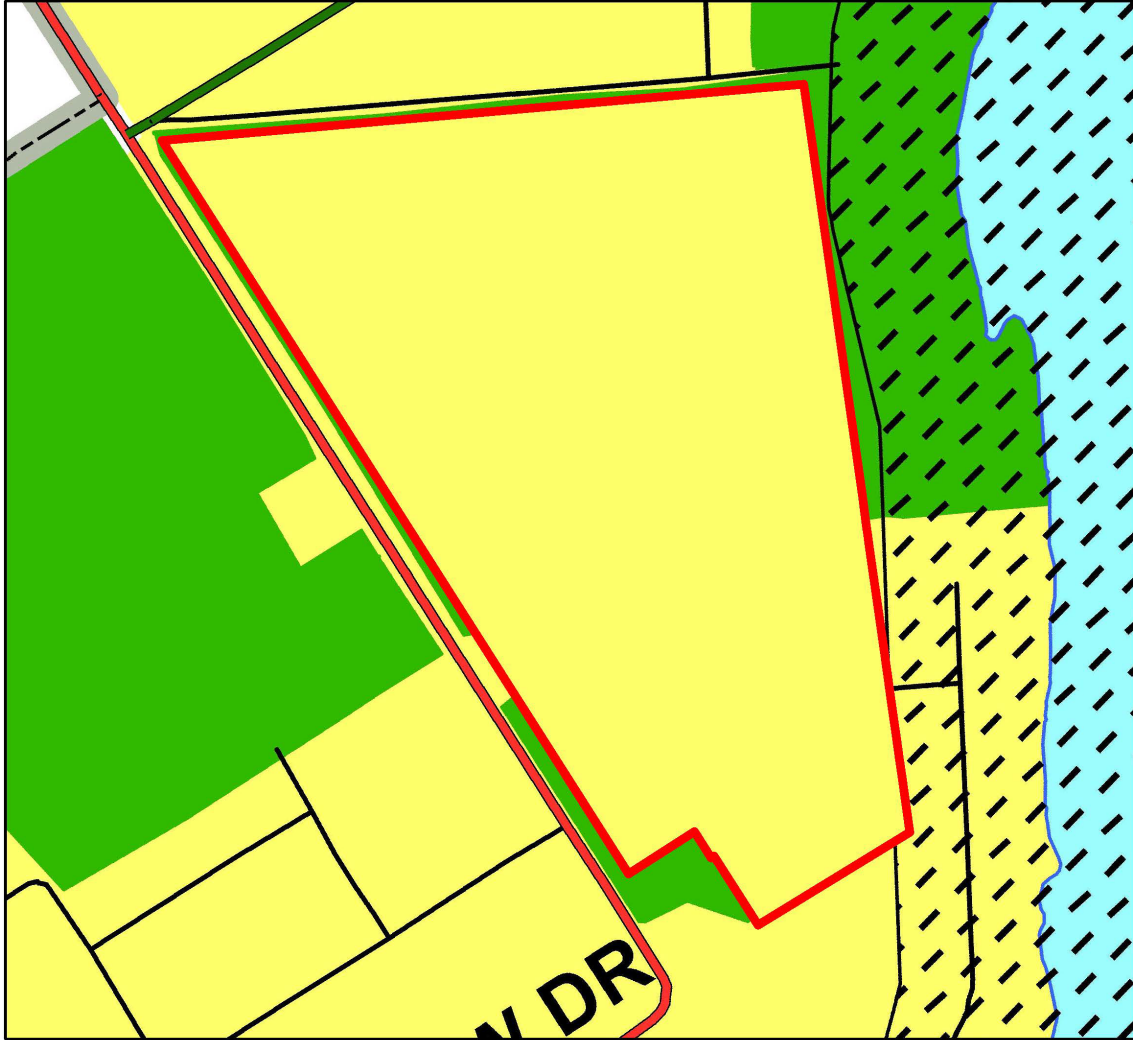
ATTACHMENT 1

"Schedule A"
Proposed Modifications to Official Plan Schedule 'A'
Growth Areas Map" – 251, 311, 353 Fuller Avenue



Legend
[Red Outline] Subject Lands

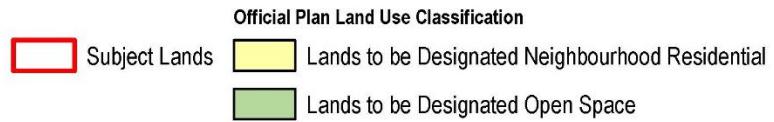
Schedule B
Proposed Modifications to Official Plan Schedule 'B'
Urban Structure" – 251, 311, 353 Fuller Avenue



Official Plan Urban Structure Classification

- Subject Lands
- Lands to be Designated Neighbourhood District

"Schedule C"
Proposed Modifications to Official Plan Schedule 'C'
Land Use – 251, 311, 353 Fuller Avenue



ATTACHMENT 2

SCHEDULE "D"

Policy 7.21 (f) 1.

1. Midland Bay Estates Draft Plan of Subdivision – File No. MD-T-0001

The current draft plan approval for the Midland Bay Estates subdivision will continue and the lands may be developed in accordance with the draft plan approval without the requirement for a further Environmental Impact Study or amendment to this Plan. Any refinements to the Open Space designation shall not require an amendment to this Plan.