

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: August 17, 2020

CASE NO(S): PL180900

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	2025890 Ontario Inc.
Appellant:	DLR Holdings & 2524445 Ontario Inc.
Appellant:	Innisfil Mapleview Development Ltd.
Appellant:	Middlefield Financial Services Limited; and others
Subject:	Proposed Official Plan Amendment No. 1-OP-1801
Municipality:	Town of Innisfil
OMB Case No.:	PL180900
OMB File No.:	PL180900
OMB Case Name:	Ministry of Municipal Affairs and Housing v. Innisfil (Town)

Heard: Written Submissions

APPEARANCES:

Parties

Town of Innisfil

County of Simcoe

Ministry of Municipal Affairs and
Housing

Counsel

Q. M. Annibale
M. Joblin
L. Vrebosch

E. M. Green

K. Hare
U. Popadic

Innisfil Mapleview Development Ltd. Sugar Meadows Inc.	K. Sliwa
2025890 Ontario Inc. Middlefield Financial Services Ltd. Nextnine Ltd.	N. M. Smiley
DLR Holdings and 2524445 Ontario Inc.	J. Feehely
1602850 Ontario Inc. and 2367808 Ontario Inc. (Party to MMAH appeal)	D. B. Artenosi M. Cara
D.G. Pratt Construction Ltd. (Party to MMAH appeal)	A. Skinner
Michael and Sally Stanleigh (Party to MMAH Appeal)	M. Vernon

DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The Town of Innisfil (“Town”) adopted an Official Plan (“OP”) on January 17, 2018. The County of Simcoe (“County”) approved the OP with modifications on October 9, 2018. Several appeals were filed, including an appeal by the Ministry of Municipal Affairs and Housing (“MMAH”).

[2] An initial Case Management Conference (“CMC”) added several Parties to these proceedings. The status for most of these added Parties was tied to the appeal filed by the MMAH.

[3] At the time of that CMC, the Tribunal was advised that consideration was underway regarding changes to certain provincial planning policies and planning instruments, but no firm timeline was provided to the Tribunal and the anticipated changes were not in effect. Appropriate procedures were further complicated by the fact

that several interests were in attendance who had filed appeals that were not forwarded to the Tribunal. As such, the Tribunal had no jurisdiction to deal with them at the CMC. The reader is referred to the decision of the Tribunal from the initial CMC, issued September 24, 2019, for additional details.

[4] The Tribunal understood at that initial CMC that all Parties had been engaged in discussions to narrow or settle their appeals, but those discussions were not yet complete at the time of the CMC. To provide sufficient time for appropriate discussions that might narrow or settle matters, the Tribunal directed a written hearing with filings to be made in May 2020.

[5] Prior to the time of filing for the written hearing, the Tribunal was advised that a settlement had been reached on the MMAH appeal. The Tribunal was advised that the modifications to the OP contemplated by the settlement would likely impact the positions taken by the remaining Appellants. As such, the Tribunal was asked to postpone the filing requirements for the broader written hearing and deal first with the MMAH appeal settlement.

[6] Following further discussions between the Parties, this request came eventually to the Tribunal on consent or with no objection.

[7] The Town has brought a written motion seeking an order of the Tribunal allowing the MMAH appeal in part and modifying the OP accordingly. The motion also sought an order of the Tribunal providing direction to deal with the portions of the OP that remain under appeal. Following further discussion, the MMAH settlement itself eventually came to the Tribunal on consent or no objection by all Parties.

[8] For this written motion hearing, the Tribunal had before it the Affidavit of Stefan Szczerbak, sworn on May 4, 2020. Mr. Szczerbak is a full Member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario. He executed the Tribunal's Acknowledgement of Expert's Duty form. The Tribunal qualified Mr. Szczerbak to provide independent expert opinion evidence in these land use matters.

Mr. Szczerbak's evidence was unchallenged. The Tribunal accepts and relies upon the affidavit evidence of Mr. Szczerbak.

[9] As noted above, the Town adopted its OP on January 17, 2018. On February 9, 2018, the Province released the Provincial Agricultural Land Base Mapping ("ALBM"). At the time of this release, the Growth Plan for the Greater Golden Horseshoe 2017 ("Growth Plan 2017") was in effect. Policy 4.2.6.2 of the Growth Plan 2017 required the ALBM to be implemented in official plans:

4.2.6 Agricultural System

...

2. *Prime agricultural areas*, including *specialty crop areas*, will be designated in accordance with mapping identified by the Province and these areas will be protected for long-term use for agriculture.

[10] When the County approved the OP with modifications, s. 18.1.9 and 18.1.10 were inserted, along with Schedule BB: Agricultural Land Base. The Tribunal understands that this was in an attempt to address the non-conformity between the adopted Schedule B in the OP and the provincial ALBM, released just after the OP was adopted.

[11] On November 13, 2018, MMAH appealed the modified OP. The MMAH appeal focused on s. 18.1.9 and 18.1.10, along with Schedules B and BB. MMAH cited the ALBM and the requirement that prime agricultural areas be designated in accordance with the ALBM. MMAH also referenced the Provincial Policy Statement 2014 ("PPS 2014"), in effect at the time. Policy 2.3.5.1 of the PPS 2014 provides that land may be excluded from prime agricultural areas only after a municipal comprehensive review, and that review must satisfy certain requirements in policy 1.1.3.8(c), (d) and (e), all of which are intended to protect prime agricultural lands.

[12] On May 1, 2020, the Provincial Policy Statement 2020 ("PPS 2020") came into effect, replacing the PPS 2014.

[13] The Growth Plan for the Greater Golden Horseshoe 2019 ("Growth Plan 2019") came into effect May 16, 2019. Growth Plan 2019 made certain changes affecting the

application of the ALBM. Specifically, policy 4.2.6.8 now provided that the ALBM does not apply until it has been implemented in the applicable upper-tier Official Plan. The Town is a lower-tier municipality. The County is the upper-tier municipality. Until the County implements the ALBM in its OP, this policy of the Growth Plan 2019 provides that:

...*prime agricultural areas* identified in upper-...tier official plans that were approved and in effect as of July 1, 2017 will be considered the agricultural land base for the purposes of this Plan.

[14] On May 1, 2020, MMAH scoped its appeal to OP policies 18.1.9 and 18.1.10, and to certain lands on Schedule B of the OP.

[15] As a result of this scoping, the MMAH appeal no longer applies to the lands indicated as being of interest to 1602850 Ontario Inc., 2357808 Ontario Inc. and to Michael and Sally Stanleigh. Each of these interests had been made Parties to MMAH appeal.

[16] Also, as a result of this scoping, the MMAH appeal no longer applies to lands that are the subject of other appeals. These are the appeals of Sugar Meadows Inc., DLR Holdings and 2524445 Ontario Inc., and 2025890 Ontario Ltd., Middlefield Financial Services Ltd. and Nextnine Ltd. The appeals by these Appellants remain outstanding.

[17] The Tribunal was advised that the proposed modifications in the scoping and settlement of the MMAH appeal also resolves the appeal of Mapleview Development Ltd.

[18] Those parts of the OP no longer subject to any appeal have come into effect by operation of s. 17(39) of the *Planning Act*. The only parts of the OP that remain under appeal are the land use designations of those lands shown on Exhibit K to the affidavit of Mr. Szczerbak.

[19] The proposed modifications to policy 18.1.9 and to policy 18.1.10 reflect the changes in the Growth Plan 2019 that deal with the implementation of the ALBM. They are proposed now to read:

18.1.9 For information purposes, the Provincial Agricultural System as established by the Growth Plan for the Greater Golden Horseshoe 2019, is illustrated in Schedule BB. However, until such time that it is implemented by the County and the designations have been identified in the County Official Plan, in coordination with the Town, this mapping need not be integrated into the Town's Official Plan land use designations. The boundaries of the Provincial Agricultural System may be refined by Simcoe County through its initial implementation of the mapping or through a subsequent Municipal Comprehensive Review.

18.1.10 The Town may initiate amendments to its mapping in accordance with the County of Simcoe Official Plan and provincial policy.

[20] The Town's 2006 OP designated certain lands as Agricultural. Some of these lands were converted to another designation in the OP adopted in 2018. The Town, the County and MMAH have agreed that portions of these lands should now revert to their previous Agricultural designation with some adjustments to conform to the County OP. Mr. Szczerbak listed these changes in Exhibit F to his affidavit and illustrated them in Exhibit G to his affidavit.

[21] The Town, the County and MMAH also agreed to have the provincially-owned site at 3722 Fairway Road, known as the Kempenfelt Conference Centre, returned to its previous designation of Shoreline Residential. This designation is consistent with the Town 2006 OP and the County OP.

[22] On the affidavit evidence of Mr. Szczerbak, the Tribunal finds that the proposed modifications are consistent with the PPS 2020, conform to the Growth Plan 2019 and conform to the County OP. The Tribunal further finds that these proposed modifications conform to the policy regime of the Town OP and are approved.

WRITTEN HEARING REQUIREMENTS FOR REMAINING APPEALS

[23] The remaining appeals will proceed to a written hearing as originally ordered by the Tribunal but with filing dates varied to continue to accommodate time for any further settlement or scoping discussions.

[24] The decision under appeal is that of the County, although the Town took the lead in bringing the motion regarding the settlement with MMAH. As directed previously by the Tribunal, the Town and the County may elect to file jointly or separately. If they elect to file jointly, their written argument plus authorities is to be filed by noon on **Thursday, October 1, 2020**. Appellants are to file their written argument by noon on **Thursday, October 8, 2020**. Joint reply, if any, is to be filed by **Thursday, October 15, 2020**.

[25] In the event the County and the Town elect to file separately, the Town may file in response as set out for the Appellants and reply, if any, will be filed by the County.

[26] All filings are to be electronic and in hard copy. Electronic copies are to be filed in Word or Word documents published to pdf format. Argument is limited to a maximum of 20 pages, plus authorities; reply is limited to a maximum of seven pages.

[27] I remain seized of this matter.

ORDER

[28] The Tribunal Orders that:

- a. The appeal of the Ministry of Municipal Affairs and Housing is allowed in part.
- b. Section 18.1.9 of the Town of Innisfil Official Plan is modified as follows, and as so modified is approved:

18.1.9 For information purposes, the Provincial Agricultural System as established by the Growth Plan for the Greater Golden Horseshoe 2019, is illustrated in Schedule BB. However, until such time that it is implemented by

the County and the designations have been identified in the County Official Plan, in coordination with the Town, this mapping need not be integrated into the Town's Official Plan land use designations. The boundaries of the Provincial Agricultural System may be refined by Simcoe County through its initial implementation of the mapping or through a subsequent Municipal Comprehensive Review.

- c. Section 18.1.10 of the Town of Innisfil Official Plan is modified as follows, and as so modified is approved:

18.1.10 The Town may initiate amendments to its mapping in accordance with the County of Simcoe Official Plan and provincial policy.

- d. The land use designations in the Town of Innisfil Official Plan are modified and approved in accordance with Attachment 1 to this Decision.
- e. Those parts of the Town of Innisfil Official Plan, which remain under appeal in this proceeding on a site-specific basis are the land use designations of those lands as shown on Attachment 2 to this Decision.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

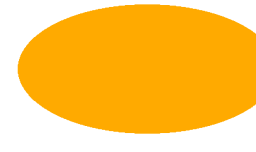

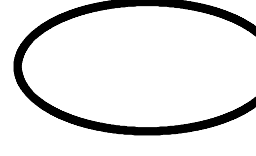

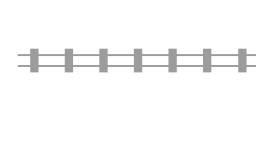


If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

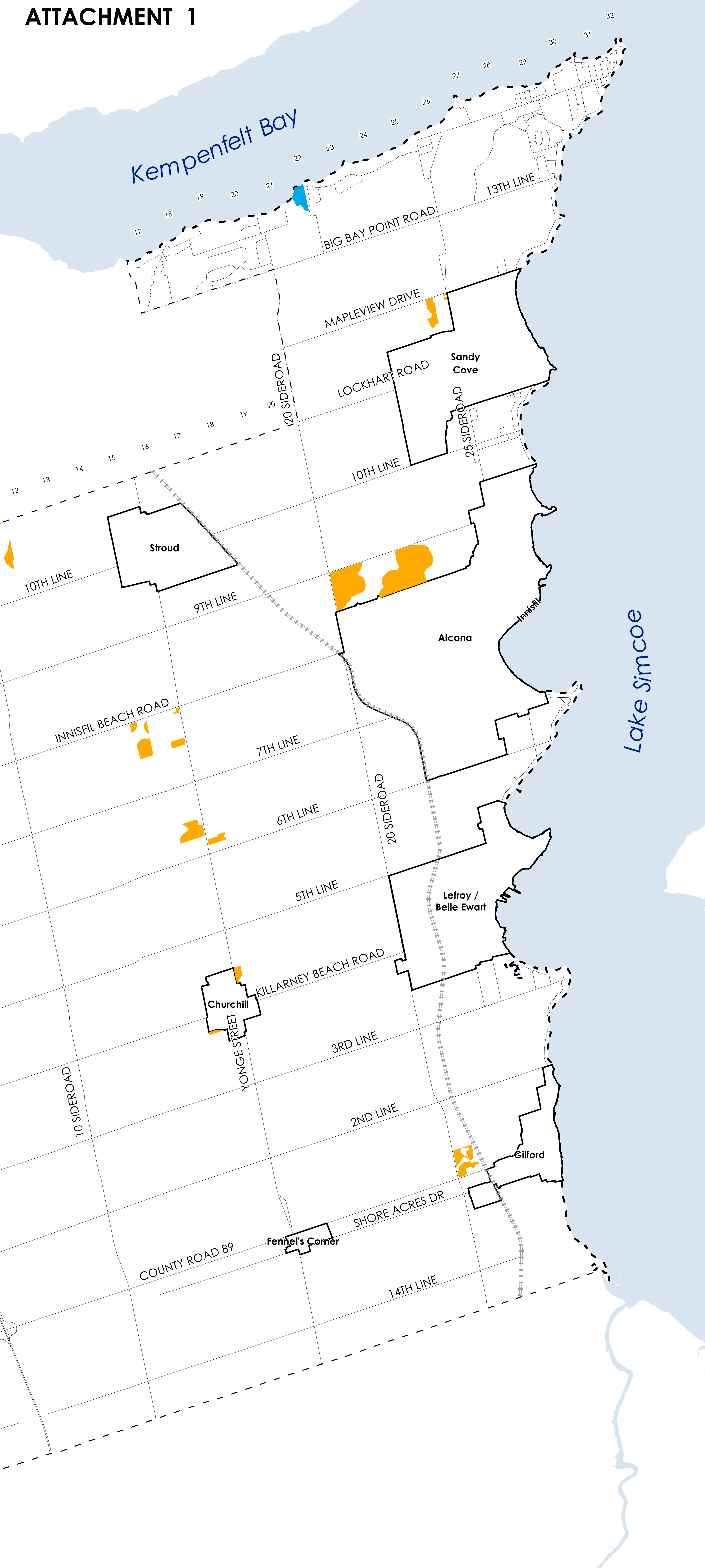
Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

-  Areas to Remain Agricultural Area
-  Areas to Remain Shoreline Residential Area
-  Settlement Area
-  Municipal Border
-  Railway
-  Road
-  Lake



ATTACHMENT 2

- Lands Remaining Under Appeal PL180900
- Big Bay Point Resort Secondary Plan Boundary
- Greenbelt Plan - Natural Heritage System Overlay
- Waste Disposal Assessment Area
- Waste Disposal Sites
- Natural Heritage System
- Municipal Border
- Settlement Area (see Schedules B1 to B3, B5 & B7 to B10)
- GO Station
- Road
- Streams
- Parcel Fabric
- Railway
- Hazard Land Area Overlay
- Lake Bed
- Official Plan Land Use**
- Agricultural Area
- Community Space
- Estate Residential Area
- Extractive Industrial Area
- Parks and Open Space
- Resort Recreational
- Rural Area
- Rural Commercial
- Rural Industrial
- Shoreline Commercial Area
- Shoreline Residential Area
- Specialty Crop Area
- Shoreline Commercial Area
- Community Space
- KNHF & KHF
- Parks and Open Space

