

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



ISSUE DATE: September 24, 2019

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 and 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: August 13, 2019 in Innisfil, Ontario

APPEARANCES:

Parties

Counsel

Town of Innisfil

M. Joblin and L. Vrebosch

County of Simcoe

M. Green

Ministry of Municipal Affairs and
Housing

K. Hare and J. Evola

Innisfil Mapleview Development Ltd.
Sugar Meadows Inc.

K. Sliwa and A. Kurts

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

**MEMORANDUM OF ORAL DECISION DELIVERED BY C.J. BRYSON and
SUSAN de AVELLAR SCHILLER ON AUGUST 13, 2019 AND ORDER OF THE
TRIBUNAL**

BACKGROUND

[1] This was the first Case Management Conference (“CMC”) held in these proceedings, as mandated by s. 39 of the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, Chapter 23, Schedule 1 (“LPATA”)

[2] Pursuant to s. 17(2) of the *Planning Act*, R.S.O. 1990, c. P.13 (“Act”), Council of the County of Simcoe (“County”) is the approval authority for the official plans of the Town of Innisfil (“Town”). The Town adopted a new official plan (“OP 2018”) on January 17, 2018, which it forwarded to the County for approval.

[3] At that time, the Province had issued the Agricultural System map as part of the then Growth Plan for the Greater Golden Horseshoe, 2017 (“Growth Plan 2017”), under which it required municipalities and approval authorities to comply with the provincial mapping in their official plans. The designations for agricultural lands in Schedule B to OP 2018 did not reflect the mandatory provincial mapping, being based upon separate County and Town mapping. A Schedule BB to OP 2018, which mirrored the mandatory

provincial mapping, was therefore included in the package County staff placed before the County for consideration.

[4] Prior to the County considering OP 2018, inclusive of Schedules B and BB, the Ministry of Municipal Affairs and Housing (“MMAH”) notified municipalities and approval authorities that it was considering changes to the Growth Plan 2017 in relation to agricultural system mapping and municipal and approval authority options for altering same. Upon this notice, the County placed OP 2018, inclusive of Schedules B and BB before its Council, with a recommendation that Council approve both Schedules but with a non-decision over the numerous lands which would have conflicting land use designations as a result.

[5] County Council then approved OP 2018 and Schedule B, leaving Schedule BB in OP 2018 for information purposes only, with the expectation that the ongoing County Municipal Comprehensive Review process (“MCR”) would resolve the conflicting Schedules and other land use designation and settlement boundary disputes. The Notice of Decision of the County’s approval of the Town’s OP 2018 identified three non-decisions, the lands identified as having conflicting designations between Schedule B and BB for purposes of s. 17(40) of the Act.

[6] The County then received seven appeals of land use designations set out in the approved OP 2018: MMAH; Innisfil Mapleview Developments Ltd. (“IMDL”); Sugar Meadows Inc. (“Sugar Meadows”); 2025890 Ontario Inc. (“2025890”); Middlefield Financial Services Ltd. (“Middlefield”); Nextnine Ltd. (“Nextnine”), and; DLR Holdings & 2524445 Ontario Inc. (“DLR”). The appeals of MMAH, IMDL, Sugar Meadows and DLR engage Schedules B and BB, along with related policies and Appendices of OP 2018. The appeals of 2025890, Middlefield and Nextnine engage Schedule B and related OP 2018 policies.

[7] The County further received, in response to its Notice of Limiting Appeal issued pursuant to s. 17(41.1) of the Act, six appeals of the identified non-decision regarding the Public Service Facilities designation and the decision not to address Schedule BB.

The County chose not to forward these six appeals to the Tribunal as required by s. 17(42) of the Act. The County was unable to point the Tribunal to any statutory authority for failing to forward to these appeals to the Tribunal.

[8] Upon inquiry, none of the County, MMAH or other parties were able to direct the Tribunal to its jurisdiction to address appeals which were not forwarded to it. While the Tribunal may have powers to order municipalities and approval authorities to rectify procedural errors discovered upon an appeal being received at the Tribunal, the Tribunal was not satisfied at this hearing event that it has authority to consider and deal with appeals that were never forwarded to it by the County and were not before the Tribunal.

[9] Accordingly, this CMC proceeded for the seven appeals before the Tribunal, pursuant to s. 33(1) of the *LPATA* and Rules 26.17 to 26.26 of the Tribunal *Rules of Practice and Procedure* (“Rules”). The Tribunal did not deal with the alleged non-decisions appeals that were not forwarded to the Tribunal by the County.

REQUESTS FOR STATUS

[10] The statutory parties to the appeals include the seven appellants and the County, pursuant to s. 17(36) of the Act. On April 3, 2018, significant changes to the Act and to the Tribunal’s governing legislation came into effect. Pursuant to this legislation which remains in force for these proceedings, requests of others to obtain status to participate herein must have been made in writing to the Tribunal 30 days or more prior to this CMC, pursuant to s. 40 of the *LPATA* and Rule 26.19 of the Rules.

[11] The Tribunal received five requests for status within the permitted timeframe: the Town’s request for party status to all appeals on the basis OP 2018 is consistent with the Provincial Policy Statement, 2014 (“PPS”) and conforms to the Growth Plan 2017; the request of D.G. Pratt Construction Ltd. (“Pratt”) for party status to the MMAH appeal due to concerns regarding Schedule BB and provincial mapping; the request of 1602850 Ontario Inc. (“Cortel”) for party status to the MMAH appeal in the same regard

as Pratt; the request of Michael and Sally Stanleigh for party status to the MMAH appeal due to concerns with Schedule B5 to OP 2018, and; Colleen Steiner for participant status.

[12] The Town is the author of its OP 2018 and as such has a unique and valuable perspective to share with the Tribunal to assist it in fairly and efficiently adjudicating the within appeals. Accordingly, and without objection, the Town was granted party status to all of the appeals.

[13] Pratt and Cortel, who each filed a non-decision appeal with the County in relation to Schedule BB, also were determined to have a unique and valuable perspective to share with the Tribunal in relation to their site-specific concerns with OP 2018 and to be of assistance to the Tribunal in fairly and efficiently adjudicating the MMAH appeal to Schedule B and BB and related OP 2018 policies. Accordingly, and without objection, Pratt and Cortel were granted party status to the MMAH appeal.

[14] Michael and Sally Stanleigh requested party status to the MMAH appeal regarding their concerns with OP 2018 Schedule B5, which they assert is included by reference in Schedule B. The Town objected to the Stanleighs obtaining party status upon its view that the MMAH appeal regarding Schedules B and BB and related policies did not encompass Schedule B5 to OP 2018. MMAH counsel could not confirm whether MMAH agreed or disagreed with the Town's position as to the scope of the MMAH appeal. The Tribunal therefore granted the Stanleighs party status to the MMAH appeal for having a unique perspective to share regarding their lands and related concerns with OP 2018 Schedule B. The Tribunal did not accept the Town's submission of prejudice regarding the Stanleighs' party status. As with other parties sheltering under the MMAH appeal, the Stanleighs' status will be scoped by any changes in the MMAH appeal position. Accordingly, any prejudice to the Town is speculative at this time and prejudice would be incurred by the Stanleighs if denied status at this time. The Stanleighs were therefore granted party status to the MMAH appeal.

[15] Ms. Steiner requested participant status in these proceedings and was granted

same without objection. The Tribunal confirmed that Ms. Steiner understood that only her written submission for status would be before the Tribunal for purposes of a hearing of the appeals, unless she was called upon by the Tribunal in the future to provide evidence it felt was necessary to the determination of the appeals.

MOTION

[16] The County filed a Motion for Directions (“Motion”) with the Tribunal in advance of this CMC. In the motion, the County requested an adjournment of the appeals of IMDL, Sugar Meadows and DLR *sine die* to allow for completion of the County MCR process, which it submitted may resolve all the within appeals through resolution of the conflicting Schedules B and BB, related policies and settlement boundary issues.

[17] The County further requested that the parties to the appeals of 2025800, Middlefield and Nextnine be directed to address the issue of consolidation of the appeals on consent, that these appellants outline the legislative and policy basis of their appeals and report same to the Tribunal, and that these appellants disclose to the parties and the Tribunal any potential motions they may bring in relation to these proceedings.

[18] Finally, the County requested the Tribunal to direct MMAH to scope its appeal in view of the new A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019 (“Growth Plan 2019”), which no longer requires municipalities and approval authorities to abide by provincial mapping of Agricultural Systems, by providing alternative approaches to the mapping of these lands at a local level. It further sought the Tribunal to direct the Town, County and MMAH to work together to understand the concerns of other parties and to identify a path forward to the Tribunal at a further CMC. Each appellant responded to the Motion in written submissions and at the CMC.

[19] MMAH was unable to provide the Tribunal, appellants and parties with a position as to the scope of its appeal in face of the changes to the provincial mapping requirement in the Growth Plan 2019. MMAH however took the position that the appeals

should be addressed as requested in the Motion. MMAH counsel suggested the County MCR process, potential legislative and potential PPS changes justified adjourning the appeals *sine die* at this time. He was however unable to provide any insight to the Tribunal in regard to potential changes in the legislative and policy framework or how proceeding under in force legislation and policy at this time would prejudice the appellants, Town, County or MMAH itself. Similarly, MMAH counsel was unable to provide any insight into potential settlement of its appeal and those of the other appellants as a result of the ongoing County MCR process and party discussions.

[20] Counsel for IMDL and Sugar Meadows reiterated to the Tribunal that IMDL has appeals of prior Town and County official plans that are adjourned *sine die*, pending completion of the County MCR process. Counsel submitted that those appeals should be resolved prior to its current appeals being resolved. As with MMAH however, counsel for IMDL was unable to identify any prejudice to its clients by proceeding under in force legislation and policy at this time and could not provide the Tribunal with details of prejudice to the older appeals by doing so. And similarly, counsel could not provide the Tribunal with any insight into how the MCR process would resolve the appeals of IMDL and Sugar Meadows. Counsel suggested that they were told by the Tribunal to appear at the CMC only to formalize an earlier adjournment request and not to prepare otherwise. Upon inquiry by the Tribunal however counsel was unable to identify the person at the Tribunal who was said to have directed IMDL and Sugar Meadows to not be prepared to proceed on the merits of CMC matters as set out in s.33(1) of the *LPATA* and under Rule 26.20.

[21] Counsel for 2025890, Middlefield and Nextnine submitted that their appeals should be adjourned *sine die* to allow them to be considered under the potential new legislation indicated by Bill 108, which at the time of this CMC had yet to be proclaimed and become in force, along with any transition regulations. Counsel further submitted that its clients have site-specific applications before the Town that if later appealed, should be consolidated with its within appeals, which could not happen unless its within appeals came under the expected legislative change resulting from Bill 108. Finally,

counsel submitted that other persons have applications or potential applications to the Town that may prejudice its clients' desire to build an addition to an existing nine-hole golf course. The Tribunal was not provided specific details of the other applications or potential applications or of the particular prejudice that would arise as a result of the 2025890, Middlefield and Nextnine appeals being determined in due course.

[22] Counsel for DLR supported the call for an adjournment of the seven appeals but only for up to one year to allow the parties to progress from their "procedural discussions" relating to this CMC to substantive settlement discussions.

[23] The Tribunal determined that it must operate under the in-force legislation in reaching a determination on the mandatory matters to be considered at this CMC pursuant to s. 33 of LPATA and Rule 26.20. Further, it was apparent to the Tribunal at the CMC that while the parties had discussed their shared desire for an adjournment that they had not turned their minds to serious settlement discussions, especially in absence of a MMAH position regarding Growth Plan 2019 changes to mandatory mapping of Agricultural System lands and the scope of its appeal. There was no evidence presented that the MCR process would resolve the appeals, even by its target date of late 2022, or that settlement discussions had taken place that indicate a potential for timely resolution of the within appeals should an adjournment be granted.

[24] In summary, possible legislative and policy changes are speculative and presume outcomes not known as certain at the time of this CMC. As such, they are not a basis upon which the Tribunal should grant adjournments. The Tribunal is obligated to proceed under in-force legislation and policy in determining matters before it, including matters of procedure. Further, in absence of clear evidence of prejudice relating to prior unresolved appeals, potential new appeals or active settlement discussions, the Tribunal was not satisfied these submissions formed a basis for adjournment in the circumstances. While some counsel asserted prejudice by having to do the work of written submissions for the hearing ordered below, the Tribunal was not satisfied that the provision of 20 pages of written submissions after the parties had already submitted

and the Tribunal had reviewed approximately 13,700 pages of filed material, was a basis for prejudice that would justify an adjournment.

[25] Regarding the motion relief requested for MMAH to clarify its appeal in view of the Growth Plan 2019 changes, the Tribunal ordered provision of further affidavits of all affiants to date, in which they are to explain if and how the Growth Plan 2019 alters their opinions in relation to their respective appeals. Pratt is the only party who has addressed this matter to date. Further, the Tribunal ordered that should the Town not be satisfied with the subsequent MMAH affidavit to be provided, that it may bring a motion to scope the appeal of MMAH, as outlined below. There is no need for an order or direction of the Tribunal for the other relief claimed, being the County request for MMAH to continue to work with all parties to resolve the appeal issues.

[26] In regard to the Motion relief requested for 2025890, Middlefield and Nextnine, the Tribunal determined that these parties were free to seek consolidation of their respective appeals pursuant to the Rules, which they chose not to pursue at the CMC, and that the basis of their appeals is already stated in their Notices of Appeal and materials filed in these proceedings. As for any potential for motions by these appellants, none were indicated by their counsel at this CMC.

[27] Similarly, no direction or order of the Tribunal is required to address the requested opportunity for ongoing settlement discussions for IMDL, Sugar Meadows and DLR, beyond the requested adjournment which is addressed above.

ISSUES FOR HEARING

[28] The issues for hearing are well defined in the extensive materials filed by the appellants and parties to date. The Tribunal did not feel a Procedural Order, inclusive of an Issues List, was required in the circumstances.

MEDIATION

[29] Without clarity on the position of MMAH in view of the changes in the Growth Plan 2019 to the mandatory provincial mapping of Agricultural Systems lands, an order for Tribunal mediation seemed premature to this panel and no such order was requested by the parties. The parties are free however to pursue settlement discussions pending determination of the appeals as ordered below.

HEARING FORMAT AND MATERIALS

[30] The appeals will proceed to a written hearing as ordered on August 13, 2019 and as set out below.

[31] The County and the Town may elect to file jointly or separately.

[32] If they elect to file jointly, they may file joint written argument to a maximum of 20 pages, plus attached authorities, by **Friday, May 8, 2020**. Any submissions are to be filed in electronic (Word) and hard copy. The Appellants may then file written argument in the same manner and form by **Friday, May 15, 2020**, following which the County and Town may file any reply submissions in the same manner and format by **Friday, May 22, 2020**.

[33] The decision under appeal is that of the County. If the Town and the County elect to file separately, then the Town may file in response, as set out for the Appellants above.

ORDER

[34] The Town, Pratt, Cortel, the Stanleighs and Ms. Steiner are granted status in these proceedings as directed above.

[35] The Town's materials, styled as a responding appeal record and served and filed

with the Tribunal on August 9, 2019 prior to the Town having status in these proceedings, are accepted by the Tribunal as evidence necessary for a fair and just determination of the within appeals.

[36] The appellants and parties are to file a subsequent affidavit from each of their respective planning opinion affiants by **Tuesday, November 12, 2019**, in which the experts give their opinion as to the impact of the Growth Plan 2019 changes on their subject appeal.

[37] The Motion for Directions is denied in relation to the requested *sine die* adjournment and in relation to the other relief requested for which a Tribunal order or direction is unnecessary.

[38] The Town may bring a motion for scoping of the MMAH appeal, should it be unsatisfied with the position of MMAH on its appeal after receipt of the subsequent MMAH affidavit ordered above. If the Town proceeds with such a motion, it must file its full motion record by **Tuesday, November 26, 2019**, following which the other parties may file responding motion records by **Tuesday, December 3, 2019**, and the Town may file any reply by **Friday, December 6, 2019**.

[39] A written hearing of the appeals is ordered as described in para. 32 above.

“C.J. Bryson”

C.J. BRYSON
MEMBER

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

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

Local Planning Appeal Tribunal

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