

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



ISSUE DATE: February 24, 2021

CASE NO(S): PL200391

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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
LPAT Case No.:	PL200391
LPAT File No.:	PL200391
LPAT Case Name:	ADM Agri-Industries Company v. Midland (Town)

Heard: February 19, 2021 by video hearing (“VH”)

APPEARANCES:

Parties

Counsel*/Representative

Town of Midland (“Town”)

B. Engell*

Country of Simcoe (“County”)

M. Green*

ADM Agri-Industries Company (“ADM”)

C. Lantz*

Sri Venkateswara Holdings Inc.

H. Elston*

Ed Boyd and Gloria Campbell	S. Hahn*
Hanson Development Group	P. Foran*
Midland Bay Estates Inc.	M. Schumacher*/G. Murdoch*
Pratt Development Inc.	A. Skinner*
Barrie Financial Inc.	A. Skinner*
William Smith	Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON
FEBRUARY 19, 2021 AND INTERIM ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] The Town had adopted a new Official Plan which had been approved by the County and against which there were a number of appeals.

[2] The Tribunal set a date for a Case Management Conference (“CMC”).

[3] In the lead up to the CMC, then counsel for the Town (the late Barnet Kussner) had summarized all the policies under appeal from the appellants in a matrix and had been in communication with all the appellants about scoping of their appeals on a site specific basis and advising of the Town’s desire to bring into force and effect much of the 2019 Official Plan (replacing the 2003 Official Plan). All of which was assembled into a Motion for Scoping and Partial Approval (Exhibit 2).

[4] At the CMC, the Tribunal dealt with all the matters required by s. 33(1) of the *Local Planning Appeal Tribunal Act, 2017*, dealt with an oral request for Party status, reviewed with the parties the most recent proposed revisions, and allowed the motion in part, and approved in principle the scoping and partial approval, subject to receiving the final version on consent from the parties, all for the reasons set out below.

BACKGROUND AND CONTEXT

[5] For the CMC, the Town's Motion for the Scoping and Partial Approval of the Official Plan included the land use planning affidavit of Kandas Bondarchuk (Manager of Planning for the Town) in support of the scoping and partial approval of the Official Plan as having due regard for the matters of Provincial Interest in s. 2 of the *Planning Act* ("PA"), being consistent with the Provincial Policy Statement 2020 ("PPS"), in conformity with A Place to Grow: the Growth Plan for the Greater Golden Horseshoe ("Growth Plan"), in conformity with the County Official Plan, and representing good land use planning and being in the public interest.

[6] Ms. Bondarchuk's affidavit provides in paragraph 6 that after an extensive consultation and review process, the 2019 Official Plan was adopted by Council in November 2019. Post adoption it was forwarded to the County for approval, which approval with modifications was given in August of 2020.

[7] The County filed a Response (Exhibit 4) that contained the land use planning affidavit of Kristin Dibble Pechkovsky (Senior Policy Advisor for the County and the policy planner who had reviewed the Town's Official Plan) and she concurred with the opinion of the Town's land use planner.

[8] One other appellant filed a Response consenting to the Town's Motion.

[9] There were no Responses in opposition to the Town Motion.

[10] Shortly before the CMC, Mr. Kussner had circulated a revised version of Appendix 1 (Matrix of Appeals) and Appendix 2 being the mapping of the site-specific appeals (Exhibit 3).

[11] Outstanding at that time was the area of influence for the ADM appeal.

[12] On the morning of the CMC, Mr. Engell (as the new counsel for the Town) circulated a further updated version of the Appendix 1 Matrix, a schematic of the area of influence for the ADM appeal, along with a communication that there needed to be some mapping changes to show the Barrie Financial Inc.'s lands, and some suggested wordsmithing of policy 7.21(d) (Exhibit 6).

PARTY STATUS REQUEST

[13] Attending on the CMC was Iain Donnell counsel on behalf of Anthony and Nicholas Mancuso, the owners of the property known municipally as 256 Sarah Burke Way. He requested that his clients be granted party status with regard to the property that they had purchased in 2018.

[14] As no request for party status had been completed and filed with the Tribunal, the Tribunal asked for particulars from Mr. Donnell. He advised that the planner for his clients had just advised them of this CMC and the proposed change to the Town's Official Plan would affect his clients' development plans. He told the Tribunal that his clients had concerns similar to that of Pratt Developments Inc. and were in the same general area. He said that his clients resided outside the Town, and that no one had given his clients notice that there was a new Town Official Plan.

[15] The Tribunal inquired of Mr. Donnell if he had sent any communication to counsel for the Town advising that he would be seeking party status, to which he replied he had not.

[16] The Tribunal then heard from Mr. Engell who advised that he was hearing this request for party status for the first time, that he was unaware of their issues, and that he had obviously no opportunity to seek instructions from his client.

[17] Mr. Green indicated on behalf of the County that the Official Plan had been approved by the County and that as there were a lot of development applications at the Town for which it would be helpful to have a current official plan in place.

[18] The Tribunal heard from counsel for Pratt Developments Inc. who told the Tribunal that she only received a communication the day before the CMC about this matter, but it did not identify the client. She indicated that 256 Sarah Burke Way was about five kilometres from her clients' properties, and that her clients had agreed with the Town to scope their issues on a site specific basis (subject to the aforementioned mapping refinements).

[19] In the ordinary course, those who would seek party status, would complete and submit a Party Status Request to the Tribunal at least 10 days in advance of the CMC and so advise the Tribunal (and the other parties) that such a request was going to be made. The Tribunal notes that the request for party status was made only orally and on the very morning of the CMC.

[20] While the property was purchased in 2018, the contention was that no one had made them aware of the new Official Plan, and that the purchasers' concerns were similar to one other party and in the same general area.

[21] It seems in fact that the property is about five kilometres from the appellant's lands and that appellant had already agreed to scope its issues on a site specific basis.

[22] While the Tribunal has a statutory discretion to add a party, the Tribunal does not find this to be an appropriate case in which to exercise that discretion.

[23] Firstly this is a last minute oral request with no notice; there was no filing or even an attempt to file the usual Request for Party Status Form, and no written

communication provided to the Town to advise that such a request would be made and what the issues were (which communication might at least have provided an opportunity for counsel to seek instructions).

[24] To the Tribunal it would appear that the purchase of the lands in question occurred in 2018, that the Town Council adopted the Official Plan in November of 2019, that the County approved the Official Plan in August of 2020, and the request for party status only came without notice, orally on the very morning of the CMC. This request simply comes too late in the process when all of the appellants and the Town have worked to scope the outstanding issues and are agreeable to a partial approval in principle of the Official Plan.

[25] To the Tribunal, if there were a deficiency of knowledge of the status of the new Official Plan by the purchasers, that was a matter of due diligence that should have been addressed at a much earlier stage and not on the very morning of the CMC.

[26] The Tribunal will in these circumstances not grant party status to Anthony and Nicholas Mancuso as this request simply comes too late in the process.

MOTION DECISION

[27] With regard to the Motion for Scoping and Partial Approval of the 2019 Official Plan, the Tribunal based on the affidavits of the Town's land use planner and the County's land use planner, and based on the submissions of counsel finds that the Official Plan as found in Exhibit 2, as modified by Exhibits 3 and 6, has due regard for the Provincial Interests in s. 2 of the PA, is consistent with the PPS, conforms to the Growth Plan and the County Official Plan.

[28] Accordingly, the Tribunal will allow the motion in part and approve in principle the Official Plan as found in Exhibit 2, and as modified respectively by Exhibits 3 and 6, and with further modifications to be provided to the Tribunal, including at least the following:

- i. Policy 7.21(d) wording to be finalized;
- ii. Appendix 1: Matrix of Appeals, ADM Schedule C to be added;
- iii. Appendix 2: Map 1 to include reference to the Barrie Financial Inc.'s lands in the location of appeals legend and also to be reflected in the map; and
- iv. Appendix 2: Map 7 Barrie Financial Inc.'s lands be inserted into the map.

[29] The Tribunal will task counsel for the Town to coordinate the above referenced revisions with the parties.

[30] Counsel for the Town will with the consent of the parties submit the revised and finalized documents to the Case Coordinator in electronic and hard copy along with a draft Order which shall be amended to include as the concluding paragraph:

Notwithstanding the above, the Tribunal hereby retains jurisdiction to consider and approve modifications to any policies, schedules, maps, figures, definitions, tables, associated text, etc., approved herein, as may be appropriate to dispose of any of the outstanding appeals before the Tribunal.

[31] When these revisions have been made and submitted to the Case Coordinator, the Tribunal directs that counsel for the Town shall then take the lead in the preparation and coordination of a draft Procedural Order and Issues List, which shall be provided to the Case Coordinator, at which time counsel may request that the Tribunal either set a second CMC to deal with any matters arising from the draft Procedural Order or to request the Tribunal to set a hearing date or dates.

[32] I am not seized of this matter.

[33] Scheduling permitting, I may be spoken to for case management purposes.

[34] This is the Interim Order of the Tribunal.

“Blair S. Taylor”

BLAIR S. TAYLOR
MEMBER

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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