

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** October 25, 2021

**CASE NO(S):** PL210153  
PL091167

**PROCEEDING COMMENCED UNDER** subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: McMahan Woods Developments Ltd.  
Subject: Failure of County of Simcoe to announce a decision respecting Proposed Official Plan Amendment No. TI-OP-1801  
Municipality: Township of Tiny  
OLT Case No.: PL210153  
OLT File No.: PL210153  
OLT Case Name: McMahan Woods Developments Ltd. v. Simcoe (County)

**PROCEEDING COMMENCED UNDER** subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: County of Simcoe  
Appellant: Midhurst Development Doran Road Inc., and Carson Road Development Inc.  
Appellant: Midhurst Rose Alliance Inc.  
Appellant: Township of Springwater and others  
Subject: Failure of the Ministry of Municipal Affairs and Housing to announce a decision respecting the Official Plan for the County of Simcoe  
Municipality: County of Simcoe  
OLT Case No.: PL091167  
OLT File No.: PL091167  
OLT Case Name: 1045901 Ontario Limited v. Simcoe (County)

**Heard:** October 12, 2021 by telephone conference call

**APPEARANCES:****Parties****Counsel**

McMahan Woods Developments  
Ltd. (“Appellant”)

David White

County of Simcoe (“County”)

Marshall Green

Township of Tiny (“Township”)

Sarah Hahn

**MEMORANDUM OF ORAL DECISION DELIVERED BY DAVID L. LANTHIER ON  
OCTOBER 12, 2021 AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION AND BACKGROUND TO THIS HEARING EVENT**

[1] This hearing event was scheduled by the Tribunal because of inquiries from the parties made in follow-up to the Decision of the Tribunal issued on June 25, 2021, and in anticipation of the Case Management Conference (“CMC”) scheduled for October 15, 2021.

[2] A first CMC had been conducted, and a Motion heard, on June 22, 2021. The background to that hearing event, and the context for this hearing event, is set out in that decision of the Tribunal. As explained below, a further decision and Appeal, following the first CMC, now gives rise to certain case management matters that must be addressed.

[3] At the June 22 CMC, on the Motion for Consolidation, the Tribunal ordered that Case File No. PL210153, relating to the appeal of a site-specific non-decision placed on the Appellant’s lands at 2 Darby Road (“Subject Lands”) under the Township of Tiny Official Plan (the “Township OP Appeal”) and Case File No. PL091167, an outstanding site-specific appeal by the Appellant of the County of Simcoe Official Plan (the “County OP Appeal”) be consolidated.

[4] It is noted that through inadvertence, the Title of Proceedings in the Decision and

Order issued on June 25, 2021, from that CMC and Motion, did not include reference to Case File No PL091167, to which that Decision and Order related. Both Titles of Proceeding are now referenced above.

[5] Under the Decision of June 25, 2021, the consolidated Appeals were to be case managed at a further CMC scheduled for Friday, October 15, 2021, at which time a draft Procedural Order and Issues List was to be ready for review and approval, so that a hearing could be scheduled. The Decision also addressed the request by the County that the Tribunal “approve” the balance of the Township OP with the exception of the designation on the Appellant’s Subject Lands, which was the subject of the site-specific Township OP Appeal. The Tribunal commented on the difficulties with such a request since no Appeal of the Township OP was properly before the Tribunal. Only the site-specific non-decision appealed under s. 17(40) of the *Planning Act* (“Act”) was before the Tribunal.

[6] Without limiting the factual matters or more specific policy issues that may be adjudicated by the Tribunal in both these appeals, the primary issue raised by the Appellant relates to the designation of the Subject Lands under the Official Plans. The Appellant believes the Subject Lands should not be designated as Greenland, but instead designated to permit residential development in the vicinity of a shoreline.

#### **RECENT DEVELOPMENTS – NEW SITE-SPECIFIC APPEAL – TOWNSHIP OFFICAL PLAN**

[7] The parties have now advised the Tribunal that subsequent to the first CMC, and the Tribunal’s Order consolidating the appeals, the County and the Township have now reconsidered the “non-decision” with respect to the Appellant’s Subject Lands, and have determined that the Subject Lands should remain in the mapping, designated under the Township OP as “Greenlands” land use designation. A decision was rendered to that effect.

[8] The Appellant has now appealed that decision and the Tribunal is informed that the appeal package was forwarded on September 20, 2021. As of the date of this most-recent hearing event, the Panel was informed that the submitted appeal materials and municipal record had not been administratively processed by the Tribunal and no Case File number has yet been assigned. However, as of the date of issuance of this decision, that Appeal is now before the Tribunal and has been assigned Case No. OLT-21-001382.

[9] Since a decision relating to the designation of the Subject Lands has now been made, and has been appealed, (whereas PL210153 is the appeal of the prior non-decision) the Appellant advises that once validated by the Tribunal, and the processing and adjudication of this “new” Township OP Appeal has begun, it intends to withdraw the appeal of the non-decision under PL210153 and proceed only with the Township OP Appeal relating to the decision to designate the Subject Lands as “Greenlands”.

[10] The result of this is can be summarized as follows:

- (a) The new Township OP Appeal of the recent decision pursuant to s. 17(36) of the Planning Act is now validated and before the Tribunal as OLT Case File No. 21-001382;
- (b) As the new Township OP Appeal is now before the Tribunal, the Appellant confirms that the current Township OP Appeal of the non-decision pursuant to s. 17(40) (PL210153) will be withdrawn;
- (c) The outstanding site-specific County OP Appeal (PL091167) will remain before the Tribunal;
- (d) A first CMC will be scheduled for OLT Case File No. 21-001382;
- (e) Upon the anticipated withdrawal of the current Township OP Appeal under PL210153, the prior consolidation of the current Township OP Appeal with

the County OP Appeal will obviously be ineffective. However, upon the same basis that the prior Motion for Consolidation was brought, the parties anticipate making the same request for the consolidation of the County OP Appeal with OLT Case File No. 21-001382;

- (f) Assuming the two Appeals will be consolidated it will be necessary to complete the drafting and approval of a draft Procedural Order and Issues List. The parties can then request a hearing date, which is expected to be five hearing days.

[11] Both OLT Case File No. PL210153 and Case File No. 21-001382, which are before the Tribunal, relate only to the site-specific OP designations of the Appellant's Subject Lands. Counsel for the Appellant has confirmed that the Appellant takes no position, and does not appeal, the remaining sections of the Township OP and that the only portion of the Township OP which is the subject matter of its appeal, relates to the decision relating to the Subject Lands. Accordingly, since no other appeals are before the Tribunal with respect to the balance of the Township OP, s. 17(38) of the *Act* operates to cause all of these other sections of the Township OP to come into force and effect on the day after the last day for filing an appeal, which in this case was February 21, 2021.

### **CASE MANAGEMENT DIRECTIVES**

[12] Given the circumstances outlined above, the conduct of the CMC scheduled for this Friday, October 15, 2021 will be premature, unproductive and accordingly is cancelled.

[13] With the new Township OP Appeal validated and before the Tribunal, and on the assumption that the Appellant will shortly withdraw the current Township OP Appeal relating to the non-decision (PL210153) the Tribunal will, as soon as is reasonably possible, schedule a first CMC in OLT Case File No. 21-001382 to be conducted

concurrently with the County OP Appeal. Notice of that CMC will include the parties to the current proceedings.

[14] At that hearing event the Tribunal will expect to:

- a. Conduct a first CMC of OLT Case File No. 21-001382 in the ordinary course;
- b. Upon the Motion of the Tribunal, address the consolidation of OLT Case File No. 21-001382 and the County OP Appeal (PL091167);
- c. Review a Draft Procedural Order and Issues List prepared by the parties in anticipation of the consolidated proceedings, and if appropriate issue that Procedural Order. Counsel are expected to attend to the next CMC ready to address the form and content of the draft Procedural Order and Issues List.;
- d. Set a hearing date of the consolidated Appeals, which is expected to require five hearing days;
- e. Address any other matters necessary for case management.

[15] Not less than ten (10) days prior to the scheduled CMC hearing event the parties will:

- (a) file with the Tribunal a draft Procedural Order and Issues List. In the event that there are matters in dispute with respect to the form of the Procedural Order or the identification of the Issues, the Tribunal is also to be provided with a concise summary of the issues in dispute and the position of the parties together with the draft Procedural Order and Issues List;

- (b) jointly provide the earliest date determined appropriate for the scheduling of the hearing, sufficient to permit all pre-hearing steps to be completed under the draft Procedural Order; and
- (c) to assist in the scheduling of the hearing, counsel are to provide conflict dates for counsel and witnesses for a six month period following that earliest date for a hearing.

[16] The Panel Member will remain available for continued case management of these matters to the extent permitted by the Tribunal's calendar.

[17] The Tribunal orders and provides the CMC directives contained herein for the purposes of the case management of these Appeals and, pre-emptively, in anticipation of the case management of the new appeal in OLT Case File No. 21-001382.

*"David L. Lanthier"*

DAVID L. LANTHIER  
VICE-CHAIR

**Ontario Land Tribunal**

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