

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



**ISSUE DATE:** April 09, 2018

**CASE NO(S):** PL160112

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 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	1194233 Ontario Ltd.
Subject:	Application to amend Zoning By-law No. 5000 - Refusal of Application by Township of Springwater Agricultural (A) and Environmental Protection (EP)
Existing Zoning:	Extractive Industrial Hold [ME-(H)]
Proposed Zoning:	
Purpose:	To permit the expansion of the existing neighbouring aggregate operation
Property Address/Description:	3568 Barrie Hill Road
Municipality:	Township of Springwater
Municipality File No.:	ZB-2012-002
OMB Case No.:	PL160112
OMB File No.:	PL160112
OMB Case Name:	1194233 Ontario Ltd. v. Springwater (Township)

**Heard:** March 23, 2018 by telephone conference call

**APPEARANCES:**

**Parties**

1194233 Ontario Ltd.

Township of Springwater

**Counsel**

David White

Barnet Kussner

County of Simcoe

Marshall Green

**MEMORANDUM OF ORAL DECISION DELIVERED BY THOMAS HODGINS ON  
MARCH 23, 2018 AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] The Ontario Municipal Board (“Board”) was continued as the Local Planning Appeal Tribunal (“Tribunal”) on April 3, 2018. In this Memorandum of Oral Decision and Order, the word “Tribunal” is used to refer to the Board as it existed prior to April 3, 2018.

[2] 1194233 Ontario Ltd. (“Applicant”) operates an existing sand and gravel pit, called the Eek Pit, at 3568 Barrie Hill Road in the Township of Springwater (“Township”). The Applicant proposes to expand immediately northward onto a Site that is currently designated for aggregates in the Township’s Official Plan but is not appropriately zoned.

[3] The Applicant applied to the Township for an amendment to Zoning By-law No. 5000 to rezone the Site to Extractive Industrial. Township Council refused the rezoning request and the Applicant appealed the zoning request to the Tribunal.

[4] The Applicant also applied to the Ministry of Natural Resources and Forestry (“MNR”) for a Licence to operate a pit on the Site pursuant to the *Aggregate Resources Act* (“ARA”).

[5] Three Pre-Hearing Conferences (“PHC”) were held by the Tribunal in respect to the zoning appeal. For ease of reference and continuity, copies of the Memorandums of Oral Decision and Orders (“Decisions”) from those PHCs are provided as Appendix 1.

[6] In respect to the zoning appeal, the Decisions identify three Parties (Applicant, Township and County) and fourteen Participants. The latter are persons intending to

testify to the Tribunal in respect to their views on the proposed rezoning.

[7] The Decision from the third PHC scheduled an 11 day hearing to begin on Monday March 26, 2018.

[8] It was always intended that the zoning appeal would be heard along with any referral of the Licence application by the MNRF to the Tribunal. This is the Tribunal's preferred practice as it is efficient and fair.

[9] In January, 2018 Board staff were advised by Messrs. White and Kussner that the Applicant and the Township had settled their differences and were documenting the agreement in Minutes of Settlement. Mr. White further advised that he anticipated a settlement with the County as well and that, based on the settlements, the hearing time could be reduced from 11 days to three to four days. Mr. Kussner agreed with reducing the number of days set aside for the hearing. Accordingly, in February 2018 the Tribunal reduced the length of the hearing to four days still beginning on Monday, March 26, 2018.

[10] On March 13, 2018 a Participant in the zoning appeal provided to Tribunal staff a copy of a notice he had received from Mr. White's office advising that "1194233 Ontario Ltd. (Eeks Pit) has asked for the Ministry of Natural Resources and Forestry to refer the application for the aggregate licence on 3568 Barrie Hill Road to the Ontario Municipal Board to be heard at the hearing already scheduled for the Official Plan Amendment and Zoning By-law no. 5000 commencing on the following: March 26, 2018-March 29, 2018 ...". (Mr. White had not been directed by the Tribunal to provide this notice and the Tribunal did not have a referral of the Licence from the MNRF).

[11] On the morning of Thursday, March 22, 2018 (two business days before the scheduled hearing) Mr. Kussner advised Tribunal staff by email: that both the Township and the County had settled with the Applicant; that the Tribunal's Decision from the third PHC contemplated the prospect of an adjournment of the hearing if the Licence had not been referred to the Tribunal by the MNRF in sufficient time to have it consolidated and

heard with the zoning appeal; that the MNRF has not yet referred the Licence to the Tribunal; and that the Parties may need some direction from the Tribunal prior to the scheduled hearing on how to proceed in the circumstances.

[12] On the afternoon of Thursday, March 22, 2018 (less than two business days before the scheduled hearing) Mr. White advised Tribunal staff by email that he was confident that the MNRF would refer the Licence to the Tribunal by Friday, March 23, 2018 or Monday, March 26, 2018, that his office had sent out on March 6, 2018 the notice referenced in Paragraph 10 above to 175 Objectors to the Licence and that he wished to proceed with the scheduled hearing on both the zoning appeal and the Licence referral. (This was the first time Mr. White's office had advised the Tribunal of its initiative to send out the notices about a Licence referral and the first time the Tribunal was made aware of the very significant number of Objectors to the Licence .)

[13] Based on the foregoing, the Tribunal set up a telephone conference call with the Parties for 2 p.m. Friday March 23, 2018.

#### **TELEPHONE CONFERENCE CALL**

[14] After thanking the Parties for making themselves available on short notice, the Tribunal stated that it did not have a referral of the Licence from the MNRF and wanted to discuss the status of relevant matters and how to proceed.

[15] Mr. White advised that he understood that a letter from the MNRF referring the Licence to the Tribunal had just been signed and that he could make arrangements for the Tribunal to get the letter as quickly as possible. He confirmed his initiative to send out a notice to the 175 Objectors to the Licence in the anticipation and hope the zoning appeal and the Licence could be considered together at the scheduled hearing beginning on Monday, March 26, 2018. He advised that the reference to an Official Plan Amendment ("OPA") in his notice was incorrect and that an OPA is not required or part of this matter. Mr. White wished to proceed on Monday on both the zoning appeal and the Licence and felt his case-in-chief would take just short of one and a half days.

He anticipated that a large number of individuals, not currently identified as Participants in the zoning appeal, might attend on Monday and want to provide testimony to the Tribunal in respect to the Licence. Mr. White requested that the Tribunal not be bureaucratic in respect to determining whether it has a referral from the MNRF given that the appropriate letter has been signed and was on its way to the Tribunal . He did not wish to proceed, however, in the event the zoning appeal and the Licence could not be considered together by the Tribunal.

[16] Mr. Kussner advised that some of the Participants to the zoning appeal may request Party status at the hearing given their continued opposition and the Township's recent settlement with the Applicant. He said he did not intend to call any witnesses at the hearing. Mr. Kussner said the Township was willing to proceed with both the zoning appeal and the Licence in the event the Tribunal had a referral of the Licence from the MNRF and adequate notice was provided to the appropriate persons advising that the Licence was also to be considered at the March 26, 2018 hearing. He did not wish to proceed on Monday unless the Tribunal was satisfied it had a referral from the MNRF and was prepared to consider both matters at the hearing. Mr. Kussner acknowledged the difficult position the Tribunal was in.

[17] Mr. Green confirmed that the County had settled with the Applicant, did not intend to call any witnesses at the hearing and planned to simply ask the Tribunal to require an appropriate County haul road agreement as a condition of any approval.

## **FINDINGS**

[18] The Tribunal finds that the scheduled hearing must be adjourned for a number of reasons including those that follow.

[19] The Tribunal agrees with Messrs. White and Kussner and finds that it is appropriate, as was always intended, to consider the zoning and the Licence cases together. This approach is efficient and fair.

[20] The Tribunal notes that one day before the scheduled hearing it does not have a referral of the Licence from the MNRF and finds that it cannot hear a matter on Monday, March 26, 2018 that is not before it and not yet within its jurisdiction.

[21] The Tribunal acknowledges the large number of Objectors (175) to the Licence application and their need to get sufficient notice, as directed by the Tribunal after having received, considered and assessed the Licence referral from the MNRF, for a hearing that includes the Licence. The Tribunal finds that the notice provided by Mr. White's office is not appropriate and sufficient in a number of ways including: a 20 day notice period is unacceptably short; residents may have been aware when they got the notice that the MNRF had not yet referred the matter to the Tribunal and may have been confused by the mixed message; the notice was not directed by the Tribunal and does not align with the typical Tribunal notice in a number of ways; and no referral document from the MNRF was available for people to review as part of their preparation for a hearing.

[22] The Tribunal notes that it reduced the hearing time, on the advice of Messrs. White and Kussner, from 11 days to four days and finds that four days is not sufficient to begin a hearing on both the zoning appeal (with potential new Parties) and a Licence referral with a starting base of 175 Objectors. Four days may also not be sufficient for just the zoning appeal with potential new Parties.

[23] The Tribunal notes that the context of this matter has changed substantially and finds that a further PHC is required and in the public interest before any hearing is scheduled. The PHC can, amongst other matters, address any requests for Party status from the currently identified Participants to the zoning appeal, identify those wanting to participate in some way in the Licence referral, adequately identify and set aside the required time for a hearing on both matters and establish a Procedural Order ("PO") that will govern preparations for the hearing and the hearing itself. The PO will establish the "ground rules" for the hearing and will help everyone understand how the hearing will be organized. A PO is critical for a matter with significant interest such as this.

[24] The Tribunal is reluctant to adjourn hearings at the last minute. In this particular case, however, the Tribunal finds that an adjournment is unavoidable and necessary. It would not be fair to waive the necessary administrative steps that contribute to a fair and efficient hearing such as adequate notice, a further PHC and a PO for what we know now is a complex and substantial matter. The Tribunal finds that it is not being bureaucratic by adjourning the scheduled hearing but, rather, is being fair and protecting the public interest.

[25] The Tribunal will make its best efforts to schedule the required PHC and the subsequent new hearing promptly given the circumstances, but will not shorten its typical standards for notice in this regard. The standard notice periods ensure people have time to prepare and make arrangements to attend as required.

## **ORDER**

[26] The Local Planning Appeal Tribunal Orders as follows:

- a) The hearing on PL160112 scheduled to begin on Monday, March 26, 2018 is adjourned;
- b) Mr. Kussner is directed to have a sign advising of the adjournment placed on the door(s) of the intended hearing room and to have a person posted at the door of the intended hearing room for one hour before and after the intended start time;
- c) Anticipating a referral to the Tribunal of the Licence from the MNRF, the Tribunal shall schedule a PHC on both the zoning appeal and the Licence once it has had an opportunity to review the referral package from the MNRF; advance notice of the PHC shall follow standard Tribunal practice;
- d) This Memorandum of Oral Decision and Order is to be sent to the Parties, the Participants to the zoning appeal, and anyone on the Tribunal's email list

for the zoning appeal;

- e) Mr. White is directed to send the Tribunal's Case Coordinator/Planner an electronic list of the names and contact information of all persons or parties to whom his office sent a copy of the notice referenced in Paragraph 15 regarding the Licence referral; once this list is received, the Tribunal shall send a copy of this Memorandum of Oral Decision and Order to all persons/parties on the list; and
- f) This Member is not seized.

*"Thomas Hodgins"*

THOMAS HODGINS  
MEMBER

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**Local Planning Appeal Tribunal**

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Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

APPENDIX 1

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** October 13, 2016

**CASE NO(S):** PL160112

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

**Applicant and Appellant:** 1194233 Ontario Ltd.  
**Subject:** Application to amend Zoning By-law No. 5000 -  
Refusal of Application by Township of  
Springwater  
**Existing Zoning:** Agricultural (A) and Environmental Protection  
(EP)  
**Proposed Zoning:** Extractive Industrial Hold [ME-(H)]  
**Purpose:** To permit the expansion of the existing  
neighbouring aggregate operation  
**Property Address/Description:** 3568 Barrie Hill Road  
**Municipality:** Township of Springwater  
**Municipality File No.:** ZB-2012-002  
**OMB Case No.:** PL160112  
**OMB File No.:** PL160112  
**OMB Case Name:** 1194233 Ontario Ltd. v. Springwater (Township)

**Board Rule 107 states:**

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**107. Effective Date of Board Decision** A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

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Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

**Heard:** September 13, 2016 in Springwater, Ontario

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

1194233 Ontario Ltd.

D.S. White

Township of Springwater

B. Kussner

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ ON  
SEPTEMBER 13, 2016 AND ORDER OF THE BOARD**

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[1] This was the first Prehearing Conference ("PHC") concerning the proposed expansion of the Eek Pit in the Township of Springwater (the "Township").

[2] 1194233 Ontario Ltd. (the "Applicant") operates an existing sand and gravel pit, called the Eek Pit, at 3568 Barrie Hill Road, not far from the designated settlement area of Centre Vespra. The Applicant proposed to expand immediately northward. However, because of depletion of the existing pit, there was no expected change to the maximum tonnage which it would be allowed to haul on area roads.

[3] The land where the expansion is anticipated (the "subject property"), is currently designated for aggregates under the Township's Official Plan. It is currently zoned

- Agricultural ("A") and
  - Environmental Protection ("EP").
- 

[4] The Applicant applied under s. 34(10.1) of the *Planning Act* for an amendment to the Township's Zoning By-law No. 5000, to rezone this subject property to Extractive Industrial ("ME").

[5] The report of Township planning staff recommended approval of the rezoning, subject to an "H" ("Holding") provision to "ensure that all municipal considerations had addressed". The draft rezoning by-law outlined seven conditions to this Holding

provision. However, on a close vote, Council turned down the application, on the ground that it "facilitates the encroachment of the pit operation on existing or future residential uses resulting in the continuation of aggregate extractive impacts on residents located within the settlement area of Centre Vespra." The Applicant appealed to the Ontario Municipal Board (the "Board").

[6] Meanwhile, counsel for the Applicant advised that its parallel application for a Licence under the *Aggregate Resources Act* was still before the Ministry of Natural Resources and Forestry. A decision on that account was not expected much before the end of 2016, but in any event, there were likely to be controversies and a referral to this Board. It was expected, in turn, that the resulting controversies would be proposed for consolidation with the current zoning appeal. The Township replied that it was unlikely to object to such consolidation.

[7] There was consensus on the advisability of a further PHC early in 2017.

[8] The Board disposes of the above matters as follows:

1. The Board fixes **Tuesday, February 14, 2017 at 10:30 a.m.**, for the next PHC in this matter.
2. That PHC will take place at:

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**Council Chambers  
Township Hall  
2231 Nursery Road  
Springwater, ON L0L1Y2**

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3. At that next PHC, the Board will consider the list of parties and participants, a prospective Procedural Order, possible improvements to scheduling (notably whether a full five weeks will still be necessary for the hearing on the merits), and such other matters as the Board considers appropriate.

4. The hearing on the merits is scheduled for a period of **five weeks**, starting on **Monday, June 12, 2017, at 10:30 a.m.**
5. The hearing on the merits will take place at the same location as the PHC, described at paragraph 2 above.
6. There will be no further notice issued under the *Planning Act*. The Board makes no comment at this time on whether any other notice might eventually be required under the *Aggregate Resources Act*.
7. This Member is not seized.

"M. C. Denhez"

M. C. DENHEZ  
MEMBER

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**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** February 28, 2017

**CASE NO(S):** PL160112

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

**Applicant and Appellant:** 1194233 Ontario Ltd.  
**Subject:** Application to amend Zoning By-law No. 5000 -  
Refusal of Application by Township of  
Springwater  
**Existing Zoning:** Agricultural (A) and Environmental Protection  
(EP)  
**Proposed Zoning:** Extractive Industrial Hold [ME-(H)]  
**Purpose:** To permit the expansion of the existing  
neighbouring aggregate operation  
**Property Address/Description:** 3568 Barrie Hill Road  
**Municipality:** Township of Springwater  
**Municipality File No.:** ZB-2012-002  
**OMB Case No.:** PL160112  
**OMB File No.:** PL160112  
**OMB Case Name:** 1194233 Ontario Ltd. v. Springwater (Township)

**Heard:** February 14, 2017 in Springwater, Ontario

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**APPEARANCES:**

**Parties**

1194233 Ontario Ltd.

Township of Springwater

County of Simcoe

**Counsel**

David S. White

Barnet Kussner

Marshall Green

**MEMORANDUM OF ORAL DECISION DELIVERED BY HEATHER I. GIBBS ON  
FEBRUARY 14, 2017 AND ORDER OF THE BOARD**

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[1] This was the second Pre-Hearing Conference ("PHC") concerning an appeal by 1194233 Ontario Ltd. ("Appellant") of a refusal by the Township of Springwater ("Township") to amend a zoning by-law to permit a proposed expansion of the Eek Pit.

[2] At the first PHC, which took place on September 13, 2016, the parties informed the Ontario Municipal Board ("Board") that a parallel application for a Licence under the *Aggregate Resources Act* ("ARA") was still before the Ministry of Natural Resources and Forestry ("MNRF"), and it was likely that the application would be referred to the Board. There was consensus at that time that it was advisable to schedule a PHC in early 2017 to allow for the referral by MNRF, and possible consolidation of the matters before the Board.

[3] On February 14, 2017 at the second PHC, counsel for the Appellant informed the Board that MNRF has not yet made a decision on the ARA license application. The parties continue to agree that it will be most efficient to consolidate the ARA matter with this zoning by-law appeal. As a result, it is unlikely that the parties will be ready for the hearing of this zoning by-law appeal as currently scheduled, in June 2017.

[4] The Board agreed to adjourn the hearing of this matter, and to schedule a further PHC, to take place on June 12, 2017 at 10:30 a.m.

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[5] The Board also dealt with requests for status at the PHC. The County of Simcoe ("County") appeared and requested party status. The County has a direct interest in the matter and there were no objections its request. The Board therefore granted party status to the County.

[6] A number of local residents appeared at the PHC and requested participant status. The parties had no objection to any of the requests. The Board granted participant status to the individuals listed on Attachment 1.

[7] The Board therefore disposes of the above matter as follows:

1. The hearing that was scheduled in this matter for five weeks beginning June 12, 2017 is adjourned.
2. The Board fixes **Monday, June 12, 2017 at 10:30 a.m.** for the next PHC in this matter.
3. The PHC will take place at:

**Council Chambers  
Township Hall  
2231 Nursery Road  
Springwater, ON L0L 1Y2**

4. Assuming the ARA matter has been referred to the Board by that time, at the next PHC the Board will consider an update to the list of parties and participants, a prospective Procedural Order, and such other matters as the Board considers appropriate.
5. The parties may request that the PHC be converted to a telephone conference call, if the ARA matter has not yet been referred by the next PHC.

[8] No further notice will be given under the *Planning Act*. The Board makes no comment at this time on whether any other notice might eventually be required under the ARA.

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[9] This Member is not seized.

*"Heather I. Gibbs"*

HEATHER I. GIBBS  
MEMBER

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## **Attachment 1**

### **List of Participants in OMB appeal PL160112**

1. Stella Hutchinson
  2. Roy Hunter
  3. Stephanie Atthill
  4. David Aves
  5. Michael Beaudry
  6. Tracey Beaudry
  7. Dennis McClelland
  8. Susan McClelland
  9. Melanie Villeneuve
  10. Adrienne Soltau
  11. Joseph Shocrylas
  12. Tom Sarris
  13. Helen Sarris
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**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** June 22, 2017

**CASE NO(S):** PL160112

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

**Applicant and Appellant:** 1194233 Ontario Ltd.  
**Subject:** Application to amend Zoning By-law No. 5000 -  
Refusal of Application by Township of Springwater  
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**Property Address/Description:** 3568 Barrie Hill Road  
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**Municipality File No.:** ZB-2012-002  
**OMB Case No.:** PL160112  
**OMB File No.:** PL160112  
**OMB Case Name:** 1194233 Ontario Ltd. v. Springwater (Township)

**Heard:** June 12, 2017 in the Township of Springwater,  
Ontario

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**APPEARANCES:**

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<u>Parties</u>	<u>Counsel*/Representative</u>
1194233 Ontario Ltd.	David White*
Township of Springwater	Barnet Kussner*
County of Simcoe	Tiffany Thompson

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**MEMORANDUM OF ORAL DECISION DELIVERED BY RICHARD JONES ON JUNE  
12, 2017 AND ORDER OF THE BOARD**

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[1] This pre-hearing conference ("PHC") constituted the third session concerning an appeal by 1194233 Ontario Ltd. (Applicant/Appellant). The Township of Springwater denied their rezoning application involving the expansion of an existing aggregate operation known as the Eek Pit.

[2] The Board was advised by the Applicant's counsel, David White, that the application for a Licence under the *Aggregate Resources Act* ("ARA") had still not been referred to the Board by the Ministry of Natural Resources and Forestry, despite an earlier expectation last February when the second PHC was held, that it would be in hand.

[3] The Board in conjunction with the rezoning appeal will also hear that referral, and will issue an interim order to that effect when receipt of the ARA is available.

[4] In this regard, the Board after consultation with the parties scheduled the two week hearing beginning **March 26, 2018 and concluding April 11, 2018 exclusive of the Good Friday and Easter Monday holidays to start at 10:30 a.m.** in the:

**Township Administration Centre (Springwater)  
2231 Nursery Road  
Minesing  
Springwater, ON L0L 1Y2**

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[5] At the request of the Board, the Township of Springwater will arrange for notice of the hearing event and also ensure that the Council Chambers are fully available for the duration of the hearing. If the ARA referral is not available at least two weeks prior to the beginning of the notice period, the parties can request the Board, via a telephone conference call to schedule a new hearing date.

[6] Mr. White stated that he would prepare a draft Procedural Order ("PO") that will be distributed to the parties prior to final its issuance.

[7] The second PHC confirmed 13 participants. Eugene Moreau of 975 Sunnidale Road who also requested status, was affirmed as the 14<sup>th</sup> participant with the attending parties agreeing to same.

[8] This Member is not seized.

*"Richard Jones"*

RICHARD JONES  
MEMBER

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