

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



ISSUE DATE: January 2, 2019

CASE NO.: 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
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)

PROCEEDING COMMENCED UNDER subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended

Referred by: Sharon Rew
Objector: Danella Agowissa
Objector: Lori Allen
Objector: Eric Atthill
Objector: Stephanie Atthill; and others
Applicant: 1194233 Ontario Limited
Subject: Application for a Class A licence for the removal of aggregate
Property Address/Description : Part Lot 21, Concession 9
Municipality: Township of Springwater
OMB Case No.: PL160112
OMB File No.: MM180038

BEFORE:

HELEN JACKSON)
MEMBER)
)
) Wednesday, the 2nd
) day of January, 2019

THE TRIBUNAL ORDERS that further to the Decision issued on December 12, 2018, the Procedural Order, as agreed to between the Parties and attached hereto as Schedule "A", shall be in force and effect for the purpose of governing the required procedures leading up to and including the hearing, which is scheduled to commence on Wednesday, July 3, 2019. The Tribunal has set aside three (3) days for the hearing.



REGISTRAR

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

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

SCHEDULE A

LOCAL PLANNING APPEAL TRIBUNAL

ISSUE DATE:
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Referred by:	Sharon Rew
Objector:	Danella Agowissa
Objector:	Lori Allen
Objector:	Eric Atthill
Objector:	Stephanie Atthil, and others
Applicant:	1194233 Ontario Limited
Subject:	Application for a Class A licence for the removal of aggregate
Property Address/Description:	Part Lot 21, Concession 9
Municipality:	Township of Springwater
OMB Case No.:	PL160112
OMB File No.:	MM180038

PROCEDURAL ORDER

The Tribunal Orders that:

1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on July 3, 2019, at 10:00 am, in the Council Chambers, Township of Springwater Administration Centre, 2231 Nursery Road, Minesing, Ontario.

3. The length of the hearing will be **three days**. The Tribunal will not be sitting on Fridays. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
4. The Parties and Participants identified at the prehearing conference are listed in **Attachment 1** to this Order.
5. The issues are set out in the Issues List attached as **Attachment 2**. There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
6. The order of evidence is set out in **Attachment 3**. The Tribunal may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Tribunal.

Requirements Before the Hearing

7. All parties and participants (or their representatives) shall provide a mailing address, email address and a telephone number to the Tribunal. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other parties and the Tribunal of the representative's name, mailing address, email address, and phone number.
8. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered by **May 1, 2019**. For expert witnesses, a party is to include the area of their expertise in which the expert is proposed to be qualified.
9. Expert witnesses in the same field shall have at least one meeting before the hearing to try to resolve or reduce the issues for the hearing. The experts must prepare a list of the agreed facts and the remaining issues and provide this list to all of the parties and the Township Clerk.
10. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 12. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony. For greater certainty, each expert witness statement must comply with the minimum content requirements specified in Rule 21 of the Tribunal's *Rules of Practice and Procedure*. If the expert witness has prepared any report(s) that he/she intends to rely on at the hearing, and which did not form part of the submissions made to the Township, such report(s) shall be provided to the other parties at the same as the delivery of expert witness statements, as in section 12.
11. A witness or a participant must provide to the Tribunal and the parties a participant statement consisting of a short written outline of the person's or group's background, experience and interest in the matter, a list of the issues which the participant will address and a short outline of the evidence on those issues, and a list of reports, if any, which the

participant will refer to at the hearing on or before **May 29, 2019**. If this is not done, the Tribunal may refuse to hear the participant's oral evidence.

12. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence and their area of expertise, as in section 12.
13. On or before **May 29, 2019** the parties shall provide copies of their witness and/or expert witness statements (full disclosure including reports) to the other parties and the Township Clerk. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the hearing unless ordered otherwise by the presiding Member.
14. On or before **June 19, 2019**, the parties shall provide copies of their Reply witness statements, if any, to the other parties and the Township Clerk.
15. On or before **June 26, 2019**, the parties shall provide copies of their visual evidence to the other parties. The Tribunal and all parties must be notified if a model will be used, and all parties must have a reasonable opportunity to view it before the scheduled commencement of the hearing.
16. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. Such a motion shall be in accordance with the Tribunal's Rules 34 to 38, which require that the moving party provide copies of the motion to all other parties 10 days before the Tribunal hears the motion.
17. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal and the other parties at least seven (7) days before the scheduled commencement of the hearing that the written evidence is not part of their record.
18. Documents may be delivered by personal delivery, electronic transmission, intranet posting, facsimile or registered or certified mail, or otherwise as the Tribunal may direct. The delivery of documents by fax shall be governed by the Tribunal's Rules 26 – 31 on this subject. Materials delivered by mail shall be deemed to have been received five business days after the date of registration or certification. Parties are required to deliver a hard and electronic copies of their evidence filed under Paragraphs 10-14 inclusive.
19. In accordance with the Tribunal's Rule 70(h), the Parties will be required to produce and cost share joint document book(s) to the extent possible for common documentation.
20. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rules 61 to 65 apply to such requests.
21. The Tribunal will conduct mediation on consent of the parties or on motion of a party if the Tribunal sees fit.
22. The purpose of the Procedural Order and the meaning of the terms used in the Procedural Order are set out in **Attachment 4**.

**This Member is not seized.
So orders the Tribunal.**

ATTACHMENT 1**LIST OF PARTIES AND PARTICIPANTS****PARTIES****Counsel/Agent**

1. **1194233 Ontario Ltd.**

David S. White, Q.C.
Lawrence Hansen
Devry Smith Frank *LLP*
Barristers & Solicitors
95 Barber Greene Road, Suite 100
Toronto, ON M3C 3E9

E-mail: david.white@devrylaw.ca
lawrence.hansen@devrylaw.ca

Tel.: 416-446-3330

Fax: 416-449-7071

2. **The Corporation of the Township
of Springwater**

Barnet H. Kussner
WeirFoulds LLP
Barristers & Solicitors
66 Wellington Street West, Suite 4100
Toronto-Dominion Centre
Toronto, ON M5K 1B7

E-mail: bkussner@weirfoulds.com

Tel.: 416-947-5079

Fax: 416-365-1876

PARTICIPANTS

1. **Stella Hutchinson**
2. **Roy Hunter**
3. **Stephanie Atthill**
4. **Erick Atthill**
5. **David Aves**
6. **Michael Beaudry**

7. **Tracey Beaudry**
8. **Dennis McClelland**
9. **Susan McClelland**
10. **Melanie Villeneuve**
11. **Adrienne Soltau**
12. **Joseph Schocrylas**
13. **Tom Sarris**
14. **Helen Sarris**
15. **Krista Shaw**

ATTACHMENT 2**ISSUES LIST****LIST OF ISSUES OF OBJECTORS**

1. Are there adequate measures in place to mitigate predicted noise levels in accordance with provincial standards?
2. Are there adequate measures for traffic?
3. Are there adequate measures for the control of dust?
4. Are there adequate measures to address pollution?
5. Are there adequate measures for public safety?
6. Should there be measures to account for continued population growth in the area, including both in respect of residential development and extractive industries, and if so, is this adequately addressed?
7. Are there adequate measures to deal with potential adverse impacts on the water supply?
8. Are there adequate measures to monitor water quality?
9. Does the proposed expansion comply with the Official Plan of the Township of Springwater?
10. Is there a basis for not issuing the licence because the area is included in the study area for the expansion of the area covered by the Greenbelt and, if so, should the licence not be issued on that basis?
11. Are the adequate measures in the site plans for the protection and rehabilitation of trees?
12. Are there adequate measures in place in the site plans to deal with potential adverse impacts on the water supply?
13. Are there adequate measures in place in the site plans for hours of operation?

ATTACHMENT 3**ORDER OF EVIDENCE**

1. 1194233 Ontario Ltd.
2. Any other party or participant in support of the proposed Zoning By-law Amendment and the Licence to operate a pit pursuant to the *Aggregate Resources Act*.
3. The Corporation of the Township of Springwater
4. Any other party or participant in opposition to the Zoning By-law Amendment and Licence (the precise order to be determined no less than ten (10) days prior to the start of the hearing)
5. Reply Evidence of 1194233 Ontario Ltd.

ATTACHMENT 4

PURPOSE OF THE PROCEDURAL ORDER AND MEANING OF TERMS

The Tribunal recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Tribunal to order following the conference. The Tribunal will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Local Planning Appeal Tribunal, and the Tribunal's Rules, from the Tribunal Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-327-6800, or from the Tribunal website at <http://elto.gov.on.ca/tribunals/lpat>

Meaning of Terms used in the Procedural Order

Party is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorization from the party.

Note that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Tribunal to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Tribunal on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Tribunal will set the time for hearing this statement. Note that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Tribunal will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence: **Written evidence** includes all written material, reports, studies documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays, which a party or participant intends to present as evidence at the hearing.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will

discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rules 41 and 42 on the summons procedure). If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witness: is usually direct examination, cross-examination and re-examination in the following way:

- direct examination by the party presenting the witness;
- direct examination by any party of similar interest, in the manner determined by the Tribunal;
- cross-examination by parties of opposite interest;
- re-examination by the party presenting the witness; or
- another order of examination mutually agreed among the parties or directed by the Tribunal.