

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



ISSUE DATE: July 11, 2019

CASE NO(S): PL190143

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 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	County of Simcoe
Subject:	Request to amend the Official Plan - Failure of the Ministry to adopt the requested amendment
Existing Designation:	'Rural' and 'Agricultural'
Proposed Designated:	'Waste Disposal'
Purpose:	To permit a Environmental Resource Recovery Centre
Property Address/Description:	2976 Horseshoe Valley Road West
Municipality:	Township of Springwater
Approval Authority File No.:	OP-2016-005
LPAT Case No.:	PL190143
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LPAT Case Name:	County of Simcoe v. Ontario (Municipal Affairs and Housing)

PROCEEDING COMMENCED UNDER subsection 12(1) of the *Local Planning Appeal Tribunal Act*, 2017, S.O. 2017, c. 23, Sched. 1, and Rule 9.01 of the Tribunal's Rules of Practice and Procedure

Request by:	County of Simcoe
Request for:	Request for Directions

Heard: By Written Motion

APPEARANCES:

Parties

Counsel*/Representative

County of Simcoe

Marshall Green

DECISION DELIVERED BY SHARYN VINCENT ON JUNE 13, 2019 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The County of Simcoe (“County”) has brought a written Motion to challenge the Tribunal’s validity screening of the County’s appeal brought against the failure of the Township of Springwater (“Township”) to make decisions with respect to applications to amend the Official Plan and Zoning By-law to permit the County’s Environmental Resource and Recovery Centre (“ERRC”).

[2] The ERRC requires an Official Plan Amendment (“OPA”) at the county level and an OPA and Zoning B-law Amendment at the Township level. All were applied for at the same time and filed together with extensive supporting materials.

[3] The County application was adopted as OPA 2 and sent to the Ministry of Municipal Affairs for approval. The Province approved County OPA 2 on November 30, 2018 and Notice of Decision circulated on January 2, 2019.

[4] To date, despite having declared the County’s applications to amend the Township’s Official Plan and Zoning By-law complete on December 16, 2016, the Township has not yet made decisions with respect to the amendment requests.

[5] OPA 2 attracted three appeals, and in pursuit of efficiency, the County appealed the non-decisions of the Township, with a view to requesting that the appeals be consolidated with the 3 appeals of OPA 2.

[6] The Tribunal however ruled the appeals invalid for failing on the face of the appeals to provide explanations in support of the s. 22(7) appeal as prescribed by s. 22(8)(a.1), and s. 22(8)(a.2) and the s. 34(11) appeal as prescribed by s. 34(11.0.0.0.4)(a) and s. 34(11.0.0.0.4)(b).

[7] The County argues that because OPA 2 is under appeal, and therefore not in force and effect, the County cannot argue that the Township Official Plan or Zoning By-law fail to

conform to the County Official Plan.

[8] Counsel argues that the circumstances constitute a ‘catch 22’ for the County as Appellant, but cites *Gravelle v. Stone Mills (Town)*, 2018 CanLII 110126 (ON LPAT) *par 46 and 48*, wherein Members Swinkin, Jacobs and Associate Chair, MacKenzie referenced the evergreen obligation of a lower tier municipality to amend Official Plan and Zoning By-law to conform with the upper tier Official Plan in s. 27 of the *Planning Act* (“Act”).

[9] *Gravelle* affords no direct remedy to this validity challenge, other than taking the reader to s. 27 of the Act and is distinguished on the fundamental fact that the upper tier Official Plan was in force and effect in that case.

[10] The Tribunal has reviewed the additional supporting affidavit materials, but in the absence of the required explanations, and while acknowledging the stated inability of the County to provide the required basis to the appeal, the Tribunal remains without jurisdiction to make a finding contrary to the stipulations of tests prescribed by the Act.

[11] The Tribunal finds that the requirements of s. 22(8)(a.2) and 34(11.0.0.0.4)(b) have not been met, therefore the appeal does not, and cannot meet the threshold, and therefore the initial ‘invalid’ finding is upheld.

ORDER

[12] The Motion is dismissed.

“Sharyn Vincent”

SHARYN VINCENT
MEMBER

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Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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