

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 28, 2016

CASE NO(S): PL111181

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 285622 Ontario Ltd. (Midves)
Appellant: Gordon Crawford
Appellant: Estate Of Marie Louise Frankcom
(Trust.S.Frankcom)
Appellant: Daniel Mallory; and others
Subject: Proposed Official Plan Amendment No. OP38
Municipality: Township of Springwater
OMB Case No.: PL111181
OMB File No.: PL111181
OMB Case Name: Crawford v. Springwater (Township)

Board Rule 107 states:

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.

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 14 and 21, 2016 by telephone conference call

APPEARANCES:

Parties

Township of Springwater

Counsel

Barnet Kussner, Jennifer Meader

County of Simcoe	Roger Beaman, Marshall Green
Ministry of Municipal Affairs	Kenneth Hare, Ugo Popadic
Midhurst Ratepayer's Association	Rodney Northey, Jennifer King
Midhurst Rose Alliance Inc.	Ira Kagan
Midhurst Development Doran Road Inc., Carson Road Development Inc.	Susan Rosenthal, Kate Fairbrother
Carson Trail Estates Inc.	Daniel Artenosi, Brad Teichman
Mallory Estates	David Bronskill, Marc Kemerer
Estate of Marie Louise Frankcom	James Feehley
Township of Adjala-Tosorontio	Isaac Tang
City of Barrie	Peter Krysiak
285622 Ontario Ltd. (Midves)	Scott Snider

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

[1] This is a decision from two pre-hearing conferences conducted by telephone conference call ("TCC") regarding appeals of Amendment No. 38 to the Township of Springwater Official Plan ("OPA 38"). The purpose of the TCC's was to finalize arrangements and the Procedural Order for the hearing of the appeal of the Ministry of Municipal Affairs and Housing, now the Ministry of Municipal Affairs ("Ministry").

[2] With regard to the appearances, Ms. Meader and Mr. Northey did not participate in the September 21, 2016 TCC and Mallory Estates and the Township of Adjala-Tosorontio were not represented at the September 21st TCC. Mr. Snider only participated in the September 21st TCC.

[3] At the September 14, 2016 TCC, the Board heard that the parties had discussed procedures for the hearing and they proposed that an October 5, 2016 start date would be appropriate. Mr. Kussner indicated that he had been attempting to schedule Board

mediation regarding the property owned by 285622 Ontario Ltd. (Midves). The parties agreed to continue working toward finalizing the Procedural Order and issues list for the hearing .

[4] At the September 21st TCC the parties filed a draft Procedural Order which proposed a hearing schedule of October 5th to October 27th with a break during the week of October 10th to allow for the mediation. The Board indicated that October 17th also would not be available.

[5] There was some discussion regarding the extent of lands to be considered at the hearing. Ms. Rosenthal stated that the Wright subdivision was being released from consideration for the hearing and she confirmed that there will be no additional lands brought forward at the hearing beyond those that were subject to the applications to the County for additional population.

[6] Mr. Kussner confirmed that the Township will not raise the issue of piecemeal planning at the hearing.

[7] There was discussion among the parties about a number of points in dispute about the draft Procedural Order and issues list. The parties agreed to make a number of modifications which included, changing the wording of paragraph 2, retaining the "Note" at the beginning of the issues list with the inclusion of additional wording, and changing the wording of issue 8.

[8] Subsequent to the hearing the Board received a revised Procedural Order and issues list that includes the changes that were discussed and has the consent of the parties.

[9] The Board adopts the Procedural Order and issues list attached to this decision as Schedule 1.

[10] The hearing is scheduled to commence on **Wednesday, October 5, 2016 at 10:30 a.m. at:**

**Council Chambers
Township Hall (Springwater)
2231 Nursery Road
Minesing, Ontario**

[11] No further notice is required.

[12] The member is seized of the appeals.

[13] The above is the direction and order of the Board.

"C. Conti"

**C. CONTI
MEMBER**

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board
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 1

ONTARIO MUNICIPAL BOARD
Commission des affaires municipales de l'Ontario

PROCEEDING COMMENCED UNDER subsection 17(16) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	285622 Ontario Ltd. (Midves)
Appellant:	Gordon Crawford
Appellant:	Estate of Marie Louise Frankcom (Trust S. Frankcom)
Appellant:	Daniel Mallory; and others
Subject:	Proposed Official Plan Amendment No. 38
Municipality:	Township of Springwater
O.M.B. Case No.:	PL111181
O.M.B. File No.:	PL111181
O.M.B. Case Name:	285622 Ontario Ltd. (Midves) v. Springwater (Township)

PROCEDURAL ORDER

The Board orders that:

The Board may vary or add to this Order 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.

Hearing

1. The appeals of Official Plan Amendment No. 38 ("OPA 38") will be heard in phases. The phase scheduled to be heard between October 5, 2016 to October 27, 2016 ("Phase One") will deal with a portion of the appeal of the Minister of Municipal Affairs and Housing (the "Ministry").
2. Phase One will determine whether or not the Board has the authority to and, if so, will, approve OPA 38 on the lands owned by Carson Road Development Inc., Midhurst Development Doran Road Inc., Carson Trail Estates Inc., the Estate of Marie Louise Frankcom, and 285622 Ontario Ltd. for which approval of OPA 38 is sought on the basis of Growth Plan policies 6.3.2.2 and 6.3.2.3, (the "Four Landowner Properties") and additional lands identified in accordance with **Section 10** of this Procedural Order. (*Note: no additional lands were identified.) If the Board does not approve those lands on that basis, the remaining portions of the Ministry's appeal will remain adjourned. The issues and timing for future Phases will be considered after the Phase 1 hearing has concluded.

Organization of the Hearing

3. The Hearing of Phase One will begin on **October 5, 2016 at 10:30 a.m.** at the **Township of Springwater Administration Centre, Council Chambers, 2231**

Nursery Road, Minesing, Ontario, L0L 1Y2.

4. The length of the Hearing will be approximately **11** days. The length of the Hearing may be shortened as issues are resolved or settlement is achieved. The Hearing will take place on the following dates:

October 5, 6, 7, 2016
October 18, 19, 20, 21, 2016
October 24, 25, 26, 27, 2016
5. On consent of the County, Township and site-specific appellants, any time during the Hearing period that is not being used for the Ministry appeal may be used to address other remaining site-specific appeals of OPA 38.
6. The Parties and Participants (see **Attachment 1** for the meaning of these terms) identified at the prehearing conference(s) are listed in **Attachment 2**.
7. The order of evidence at the Hearing is listed in **Attachment 3**. The Board may limit the amount of time allocated for opening statements, evidence in chief (including 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 Board.
8. The Issues List for Phase One of the Hearing is appended to this Procedural Order as **Attachment 4**. There will be no changes to this list unless the Board permits and a Party who asks for changes may have costs awarded against it.

Requirements Before the Hearing

9. All Parties and Participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Board as soon as possible. Any such person who will be retaining a representative should advise the other Parties and the Board of the representative's name, mailing address, email address and phone number as soon as possible.
10. On or before **2:00 p.m. on September 20, 2016**, the landowner Parties are to advise what lands additional to their own properties, if any, they will be seeking to be approved by the Board in accordance with the Decision issued by the Board dated September 16, 2016. (*Note: no additional lands were identified.)
11. A Party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the City Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before **September 22, 2016**. For expert witnesses, a Party is to include a copy of the *curriculum vitae* and the area of expertise in which the witness is proposed to be qualified.
12. Expert witnesses in the same field shall have a meeting on or before **September**

28, 2016 to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the Parties and the City Clerk.

13. An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of this must be provided as in **Section 15**. 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 Board may refuse to hear the expert's testimony.
14. Expert witnesses who are under summons but not paid to produce a report do not have to file a witness statement; but the party calling them must file a brief outline of the witness' evidence, as in **Section 15**.
15. On or before **12:00 p.m. on September 29, 2016**, the Parties shall provide copies of their witness and expert witness statements to the other Parties and to the City 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.
16. A Participant must provide to the Board and the parties a Participant statement by **12:00 p.m. on September 29, 2016**, or the Participant may not give oral evidence at the hearing.
17. On or before **2:00 p.m. on October 3, 2016**, Parties may provide to all other Parties and file with the City Clerk a written response to any written evidence of another Party.
18. On or before **2:00 p.m. on October 3, 2016**, the Parties shall provide copies of their visual evidence to all of the other Parties. If a model is proposed to be used, the Board must be notified before the hearing. All Parties must have a reasonable opportunity to view it before the hearing.
19. Documents may be delivered by personal delivery, email, facsimile or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by facsimile shall be governed by the Board's *Rules* 26 to 31 on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
20. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's *Rules* 61 to 65 apply to such requests.
21. This Order has been prepared by the Parties without prejudice to any possible positions, submissions, requests for review, appeals or any other challenges whatsoever to any Board disposition(s) in the OPA 38 proceeding.

This Member is seized.

So orders the Board.

ATTACHMENT 1

Purpose of the Procedural Order and Meaning of Terms

The Board recommends that the parties discuss this draft Order before the prehearing conference to try to identify the issues and the process that they want the Board to order following the conference. The Board 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 Ontario Municipal Board, and the Board's *Rules*, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-326-6800 or Toll Free 1-866-887-8820, or from the Board website at www.OMB.gov.on.ca.

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Board 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 Board 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 Board on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Board will set the time for hearing these statements.

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 Board 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 may ask the Board Member to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties (see Rules 45 and 46 on the summons procedure.) If the Board requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Board 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 witnesses: 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 Board;
- 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 Board.

Role of Participants: Participants are identified at the start of a prehearing or at the start of a hearing. Participant statements should be filed with the Board and the parties in accordance with the direction set out in the Board's Procedural Order. If a participant does not attend the hearing and only files a written statement, the Board may 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 the material and do not attend.

ATTACHMENT 2

List of Parties and Participants

Parties:

Ministry of Municipal Affairs (Appellant)	Ken Hare/Ugo Popadic
County of Simcoe	Roger Beaman/Marshall Green
Township of Springwater	Barnet Kussner/Jennifer Meader
Midhurst Ratepayers' Association	Rod Northey/Jennifer King
Midhurst Development Doran Road Inc. and Carson Road Development Inc.	Susan Rosenthal/Kate Fairbrother
Carson Trail Estates Inc.	Daniel Artenosi/Brad Teichman
Midhurst Rose Alliance Inc., Midhurst Rose Alliance Cooney Inc., Midhurst Rose Alliance O'Brien Inc. (collectively, "Rose Alliance")	Ira Kagan
Estate of Marie Louise Frankcom	Jay Feehely
Mallory Estate	David Bronskill
285622 Ontario Ltd. ("Midves")	Scott Snider/Shelley Kaufmann

Participant:

City of Barrie	Peter Krysiak
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The Mallory Estate and City of Barrie (Participant) will monitor but not participate in the Phase One Hearing.

ATTACHMENT 3

Order of Evidence

1. County of Simcoe
2. Township of Springwater
3. Ministry of Municipal Affairs
4. Midhurst Ratepayers' Association
5. Midhurst Development Doran Road Inc. and Carson Road Development Inc.
6. Carson Trail Estates Inc.
7. Estate of Marie Louise Frankcom
8. Midves (if applicable)

Reply will be provided by one of the Government Parties that oppose population allocation to the Four Landowner Properties. However, if the Government Parties have different areas of reply, they can ask the Board to permit a non-duplicative joint reply.

ATTACHMENT 4

Issues List

NOTE: The identification of an issue on the Issues List does not mean that all parties agree that such issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the Board at the hearing. The extent to which these issues are appropriate or relevant to the determination of the Board at the hearing will be a matter of evidence and argument at the hearing, provided that no new issues may be raised in the hearing except in accordance with paragraph 8 of the Procedural Order.

Appeal by the Ministry of Municipal Affairs

1. Does the Board have jurisdiction to allocate the discretionary 20,000 population to the Four Landowner Properties under Growth Plan policy 6.3.2.2 to 6.3.2.6 and 6.3.2.10 contrary to the decision by the County of Simcoe? **[Note: This issue is included as a placeholder as it was addressed during the jurisdictional motion heard between July 18 to 22, 2016]**
2. Would it conform with the Growth Plan for the Board to allocate part of the discretionary 20,000 population to the Four Landowner Properties contrary to the decision by the County of Simcoe?
3. Should the Board approve population allocation and growth in the County / Township contrary to the resolution of Township Council and the decision by the County of Simcoe?
4. Is it premature for the Board to allocate population to the Four Landowner Properties in light of the Township of Springwater's comprehensive Official Plan and growth management strategy review that is currently underway?
5. Would approving growth on the Four Landowner Properties conform with the County of Simcoe Official Plan?
6. Would approving growth on the Four Landowner Properties conform with the Township of Springwater Official Plan? Is it premature for the Board to allocate population to the Four Landowner Properties in light of the phasing policies in OPA 38?
7. If the Board is prepared to allocate part of the discretionary 20,000 population, should any of the Four Landowner Properties receive part of this allocation? If so, how much should each receive, and what portion of their land should be approved for urban residential designations on Schedule A – Land Use and Schedule B – Neighbourhood Structure to OPA 38?
8. If the Board determines that it is appropriate to distribute population under Growth Plan policies 6.3.2.2 and 6.3.2.3, should the Board approve those portions of OPA 38 remaining under appeal as it applies to the Four Landowner

Properties? [Note: the wording of this issue does not constitute a predetermination of the jurisdictional issue raised in the motion heard between July 18 to 22, 2016]