

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



**ISSUE DATE:** March 25, 2021

**CASE NO(S):** MM200018

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 222(4) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended

Appellant:	Robert Bruce Orrell
Subject:	By-law No. 6271-20 (Ward Boundary), to divide the Town of Aurora into six (6) wards
Municipality:	Town of Aurora
LPAT Case No.:	MM200018
LPAT File No.:	MM200018
LPAT Case Name:	Orrell v. Aurora (Town)

**Heard:** February 25, 2021 by video hearing

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Robert Bruce Orrell

Self-represented

Town of Aurora

Andrew Biggart\*  
Natalia Sheikh\*  
Patricia De Sario\*

**DECISION DELIVERED BY S. BRAUN & S. TOUSAW AND ORDER OF THE  
TRIBUNAL**

---

## INTRODUCTION

[1] This hearing before the Tribunal was a first Case Management Conference (“CMC”) with respect to the appeal filed by Robert Bruce Orrell (“Appellant”) pursuant to s. 222(4) of the *Municipal Act* (“Act”) arising from the July 14, 2020 enactment of By-law No. 6271-20 (“By-law”) by the Town of Aurora (“Town”), dividing the Town into six electoral wards.

[2] The Affidavit of Michael de Rond, Town Clerk for Aurora, dated February 2, 2021 confirming that Notice for this CMC was given in accordance with the Tribunal’s directions, is accepted by the Tribunal and is marked as Exhibit 1 to the CMC.

[3] No requests for Party or Participant status were received by the Tribunal in advance of the CMC and no such requests were made at the CMC.

## PROCEDURAL ORDER & ISSUES LIST

[4] Although the Town’s counsel had provided a draft Procedural Order (“PO”) in advance of the CMC, the Parties had not yet finalized an Issues List (“IL”). In accordance with the Tribunal’s directions, the Parties submitted a final PO with an IL on consent, now approved as contained in Attachment 1 and subject to the Tribunal’s ruling below.

[5] The Tribunal carefully reviewed the IL and notes that Mr. Orrell’s issues were stated largely by way of argumentation and evidence. As Mr. Orrell is self-represented, he may be unfamiliar with Tribunal processes, including framing issues as specific questions to be considered by the Tribunal at a hearing.

[6] In light of the foregoing, the Tribunal refers to the *Local Planning Appeal Tribunal Rules of Practice and Procedure* and, in particular, Rules 1.3 and 1.4 which allow the Tribunal to take a liberal and flexible approach and to make orders and procedural directions which offer the best opportunity for a fair, just and expeditious resolution of the merits of a proceeding.

[7] As such, for the purposes of the hearing, the statements and concerns put forward by Mr. Orrell are consolidated as follows:

a) Should the Town have considered, or did it consider, an at-large system in its review?

and

b) Did the Town's study include public consultation and if so, did the Town consider the input received?

[8] In addition to the foregoing, the Tribunal altered paragraph 14 in the PO to reflect the Tribunal's current requirements for the filing of documents.

### **SETTLEMENT/DISPUTE RESOLUTION**

[9] The issue of settlement/resolution was raised and the Parties were directed to advise the Tribunal in writing should they reach a settlement with respect to some or all of the issues prior to the hearing.

### **HEARING**

[10] The Parties requested a two-day hearing. The Tribunal noted and the Town agreed that, in this case, time is of the essence, given that s. 222(8) of the Act requires an order of the Tribunal affirming or amending the By-law, if so decided, be issued before January 1, 2022 to be applicable to the 2022 municipal election.

[11] A video hearing will commence at **10 a.m.** on Monday, **May 3, 2021** for **two days**. No further notice will be given.

[12] Parties are asked to log into the video hearing at least 15 minutes before the start of the event to test their video and audio connections:

<https://global.gotomeeting.com/join/394345397>

**Access code:** 394-345-397

[13] Parties are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at GoToMeeting or a web application is available: <https://app.gotomeeting.com/home.html>.

[14] Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: [+1 \(647\) 497-9391](tel:+16474979391). The access code is 394-345-397.

[15] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the CMC by video to ensure that they are properly connected to the event at the correct time. Questions prior to the hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

[16] This panel is not seized but, schedules permitting, may be available for case management purposes through the Case Coordinator.

[17] The Tribunal so orders.

*"S. Braun"*

S. BRAUN  
MEMBER

*"S. Tousaw"*

S. TOUSAW  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.olt.gov.on.ca](http://www.olt.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Ontario Land Tribunals

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

# ATTACHMENT 1



## Local Planning Appeal Tribunal Procedural Order

**ISSUE DATE:**

**CASE NO(S):** MM200018

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 222(4) of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended

Appellant: Robert Bruce Orrell  
Subject: By-law No. 6271-20 (Ward Boundary), to divide the Town of Aurora into six (6) wards  
Municipality: Town of Aurora  
LPAT Case No.: MM200018  
LPAT File No.: MM200018  
LPAT Case Name: Orrell v. Aurora (Town)

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 at 10:00 a.m. on **May 3, 2021** and continue, if necessary, on **May 4, 2021** and will take place virtually. The Tribunal will advise the parties of the log-in details for the hearing prior to the commencement date.

3. The parties and participants identified at the prehearing conference are as set out in Schedule "A" to this Procedural Order

4. The Issues for the hearing are as set out in Schedule "B" to this Procedural Order.

There will be no changes to the Issues unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.

5. Any person intending to participate in the hearing should provide a telephone number to the Tribunal as soon as possible (*preferably before the prehearing conference.*) Any such person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address and phone number as soon as possible.

#### **Requirements Before the Hearing**

6. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before **April 5, 2021**.

7. 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 [9]. 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.

8. 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, as in section [9].

9. On or before **April 16<sup>th</sup>, 2021**, the parties shall provide copies of their witness and expert witness statements to the other parties, the LPAT, and to the Clerk of the Town of Aurora.

**10.** On or before **April 23<sup>rd</sup>, 2021**, the parties shall provide copies of their Reply witness statements and expert's Reply Witness Statements, if any, to the other parties, the LPAT, and to the Clerk of the Town of Aurora.

**11.** On or before **April 23<sup>rd</sup>, 2021**, the parties shall provide copies of their visual evidence to all of the other parties, the LPAT, and the Clerk of the Town of Aurora. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

**12.** A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal.

*(see Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.)*

**13.** 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 at least 7 days before the hearing that the written evidence is not part of their record.

**14.** All filing shall be electronic and in hard copy. Electronic copies may be filed by email, an electronic file sharing service for documents that exceed 10MB in size, or as otherwise directed by the Tribunal. The delivery of documents by email shall be governed by the *Rule 7*.

**15.** No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

**This Member is [not] seized.**

**So orders the Tribunal.**



BEFORE:

Name of Member                    )                    Date:  
  )  
  )

---

TRIBUNAL REGISTRAR

**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 \_\_\_\_\_.*

**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 authorisation 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 Rule 13 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 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 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.

## **SCHEDULE "A"**

### **PARTIES TO THE HEARING:**

1. Robert Bruce Orrell; and,
2. Town of Aurora

## **Appeal of Aurora By-Law 6271-20**

Appellant: R. Bruce Orrell, 83 Brookeview Drive, Aurora, Ontario, L4G 6R5

Issues for LPAT Case No.: **MM200018**

LPAT File No.: **MM200018**

LPAT Case Name: **Orrell v. Aurora (Town)**

1. The 2014 Municipal ballot asked residents about moving to a Ward system. 55% of the voters rejected a Ward system.

**Issue: This historical perspective of the Ward vs. at-large systems was not considered in the discussion around the council table.**

2. When the ESR Report was received at the May 7, 2019 General Committee meeting, Councilor Thompson reminded council: *"... just as a reminder as stated in the conclusion that adopting the recommendations tonight does not constitute a switch to the ward system it just initiates the process to review the system."*

But then,

at the May 14, 2019 Council meeting, councilor Thompson made an amendment to his original motion. *"Main motion as amended: 1. That Report No. CS19-018 be received; and; 2. That Capital Project No. 13025 – Electoral System Review be approved; and 3. That a total budget of \$60,000 be approved for Capital Project No. 13025 – Electoral System Review to be funded from the Studies and Other Capital Reserve Fund; and 4. That Council endorse, in principle, the electing of all Aurora councillors, other than the Mayor, by ward vote instead of general Town-wide vote. Carried as amended."*

**Issue: The passage underlined above effectively eliminated the option of retaining the "at large" system. It rendered his conclusions a week prior moot. It set the frame of reference for the consultants; in as much as reviewing the consultants' report; the same underlined quote is repeated in the very first paragraph.**

3. During the same May 14, 2019 meeting, Councilor Gaertner asked: *"And during this process is there also going to be an opportunity for members of the public who do not think that a Ward system is appropriate to express their views and to know that they can do that legitimately in this context of what we're looking at?"*

*Mayor Tom Mrakas responded: "Of Course. I would say that there's going to be a public consultation and any member of the public would come out and speak for or against just as any issue that we put forward and discuss at Council."*

**Issue: During the consultants' exercises, this was not the case as residents were told that at large was not an option. The Mayor's response was false and misleading to the council and the public.**

## **Appeal of Aurora By-Law 6271-20**

Appellant: R. Bruce Orrell, 83 Brookeview Drive, Aurora, Ontario, L4G 6R5

4. While the mandate of the consultants was to determine the best ward system for Aurora, they did indicate in their report opposition to the idea. *"Of the 174 survey responses, 52 were strongly opposed to a ward system."*

**Issue: 30% of those residents that decided to fill out a passive survey indicated that they did not want a ward system and their opinions were not considered.**

5. The Town Clerk, Michael de Rond, commented in the Town of Aurora General Committee Report No. CS19-018 dated May 7, 2019, on page 6... *"An electoral system review requires substantial public consultation. Legislative Services staff, Communications staff and the consultant will work closely to develop an extensive stakeholder consultation plan that will include public meetings, social media outreach and the use of online tools, such as interactive maps."*

**Issue: There was no substantial public consultation. Only 174 PASSIVE survey responses were received; 9 attendees at the first public meeting and 15 at the second. A substantial consultation for a municipality with more than 55,000 residents would have put this issue on a ballot.**

6. **Issue: The process was flawed and pre-ordained.**

The consultants were given a mandate that tied their hands. In fact, their report stated: *"The Aurora ESR included two rounds of public engagement. Round 1 (October 8 – 28, 2019) sought input into what a ward system for Aurora might look like. ... Round 2 (December 4, 2019 – January 17, 2020) asked for feedback on four Options for a ward system for the Town."* The council had already laid the ground work to go to a ward system prior to the consultants doing any work. The opposition to a ward system was raised in 2014, it was also raised by a councilor during the debate around passing the bylaw to initiate the consultation. The consultants indicated that there was opposition but those responses were not considered.