

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



ISSUE DATE: April 01, 2021

CASE NO(S): PL190589

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 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: ADM Agri-Industries Company
Appellant: Richard Mattiuzzo
Subject: Proposed Official Plan Amendment No. OPA 101
Municipality: City of Mississauga
LPAT Case No.: PL190589
LPAT File No.: PL190589
LPAT Case Name: ADM Agri-Industries Company V. Mississauga (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: ADM Agri-Industries Company
Appellant: Richard Mattiuzzo
Subject: By-law No. BL 0162-2019
Municipality: City of Mississauga
LPAT Case No.: PL190589
LPAT File No.: PL190590

Heard: January 26, 2021 by video hearing

APPEARANCES:

Parties

Barbertown Ventures Inc.

Counsel

P. Foran

("Barbertown")	M. Helfand
City of Mississauga ("City")	M. Minkowski
ADM Agri-Industries Company ("ADM")	C. Lantz
Richard Mattiuzzo	J. Chauhan

**MEMORANDUM OF ORAL DECISION DELIVERED BY STEVEN COOKE AND
M. RUSSO ON JANUARY 26, 2021 AND ORDER OF THE TRIBUNAL**

[1] This is the first Case Management Conference ("CMC") for the appeals under s. 17(24) and s. 34(19) of the *Planning Act* ("Act"), for the City Council adoption of an Official Plan Amendment 101 ("OPA") and passing of a Zoning By-law No. 0162-2019 ("ZBL") on the property municipally known as 1707 – 1725 Barbertown Road ("Site").

[2] Barbertown proposes to develop 75 three storey residential units on the Site. Two separate and distinctly different appeals to the Tribunal regarding this development have come forward.

Richard Mattiuzzo

[3] Richard Mattiuzzo filed an appeal alleging that the conversion of greenlands to residential does not conform with the Provincial Policy Statements 2014, s. 1.1.3 and Part IV, the Region of Peel OP s. 2.3.2.6, the City OP s. 1.1.1, 6.3.26, 16.8.4.4.1, 16.8.4.4.2, fails to protect natural areas of the OP, and does not constitute good planning.

[4] Jaiveer Chauhan appeared before the Tribunal as Counsel for Mr. Mattiuzzo. Mr. Chauhan began by informing the Tribunal that he now represented a group of "concerned citizens" and not just Mr. Mattiuzzo. No other Party was aware of this change before Mr. Chauhan raised it. The Tribunal informed Mr. Chauhan that an organized group is to be incorporated in order to participate as a Party in the Tribunal

proceedings. Mr. Chauhan advised that he was not aware but would be willing to incorporate the group.

[5] Mr. Chauhan requested that the CMC be adjourned in order for his clients to fundraise as raising funds during Covid-19 has been difficult.

MOTION

Barbertown

[6] On January 8, 2021, Barbertown served notice to the Parties a Motion to dismiss the appeals filed by Mr. Mattiuzzo without holding a full hearing pursuant to s. 17(45) and 34(25) of the Act. The basis of the motion is provided in Barbertown's Motion Record filed as Exhibits 1A and 1B.

[7] Patricia Foran appeared as Counsel for Barbertown. In her submission to the Tribunal she gave a chronological account of the events that has led to the motion before the Tribunal.

[8] Mr. Mattiuzzo attended the statutory public meeting on February 19, 2019. At that time, he raised concerns about increased traffic, pedestrian safety, increased noise levels and reduction of greenspace.

[9] During the September 11, 2019 Council meeting Mr. Mattiuzzo made deputation to the Council expressing his concerns regarding the Transportation Impact Study ("TIS").

[10] On October 23, 2019 the OPA and ZBL was adopted by Council. During this meeting Mr. Mattiuzzo raised concerns about the integrity of the TIS and concerns that the ZBL could set a precedent for future rezoning of other zoned Greenlands.

[11] Ms. Foran informed the Tribunal that at no time during the three occasions did

Mr. Mattiuzzo address his concerns nor did he provide any expert analysis or support and focused primarily on the issues of traffic.

[12] The appeal by Mr. Mattiuzzo was filed on November 21, 2019 by Mr. Chauhan. The appeal document submitted indicates that the concerns are of an environmental nature and that Mr. Mattiuzzo intended to rely on evidence of an expert land-use planner, and environmental planner.

[13] A CMC had originally been scheduled to be held on May 13, 2020. Due to the Covid-19 pandemic the CMC was adjourned to a future date. On December 7, 2020 the Parties had been informed that the rescheduling of the CMC would be January 26, 2021.

[14] Ms. Foran submits to the Tribunal that the public record shows that Mr. Mattiuzzo primary focus has always been issues related to traffic. Ms. Foran also noted that the Mr. Mattiuzzo has not provided the Parties any indication of whether or not he has retained the services of expert witnesses.

City

[15] The City provided its Notice of Response to the Motion in n support of the Motion by Barbertown. Michal Minkowski submitted to the Tribunal that counsel for the Appellant is on the record of being involved since the application of appeal was submitted, and that the seven-month postponement of the CMC gave ample time for all of the Parties to be prepared. It was his view that any further delays would be unreasonable.

Mr. Mattiuzzo

[16] Mr. Chauhan requested an adjournment of a month to have more time to respond to the Motion. The Tribunal confirmed with Mr. Chauhan that he received the Notice of Motion on January 8, 2021 which is in accordance to the 15-day notice rule.

The Tribunal further enquired if Mr. Chauhan had reviewed the Motion materials of Ms. Foran and if he would like to make any submissions. In response Mr. Chauhan replied that he has reviewed the materials but did not have comment at this time.

[17] The Tribunal enquired from Mr. Chauhan about the progress of retaining any expert witnesses. Mr. Chauhan informed the Tribunal that in recent weeks his client has been in discussion with a potential planner but was not in a position to give further details as the planner has not been retained yet. Mr. Chauhan indicated that his client would be doing some fundraising and would soon be in a position to retain the expert witness.

Tribunal Findings and Analysis on the Motion

[18] In the Barbertown Brief of Authorities, Ms. Foran referred to a 2019 decision of Member Jackson in *Todaro v. Wasaga Beach* 2019 CanLII 23000 (ON LPAT), wherein Member Jackson found that:

“Simply put, the Appellant has a responsibility to demonstrate at the motion hearing that there are sufficient and legitimate planning grounds that underlie the appeal, and to show the prospect of evidence that could sustain their appeal at a hearing. The Tribunal notes that Ms. Fox did not file a response to the motion and provided only oral submissions. In her oral submissions, she reiterated her concerns regarding affordable housing, sustainability and over-development, but was not able to frame these concerns by way of a cogent planning analysis. These concerns may be sincere but without an articulated planning basis for the concerns, the Tribunal has no understanding of how Ms. Fox intends to support her concerns and her allegation that the CIP is inconsistent with the PPS.”

[19] The decision also refers to the decision in *Zellers Inc. v. Royal Cobourg Centres Ltd.*, 2001 CarswellOnt 3362, [2001] O.J. No. 3792, (Ont. Div. Crt), which states that:

“...in neither the appeals themselves, nor in materials responding to this Motion, do the appellants discharge the onus on them "to demonstrate through their conduct in pursuing the appeal, including their gathering of evidence to make their case, that issues raised in their Notice of Appeal justify a hearing.”

[20] The Tribunal is satisfied that the Motion was properly executed in accordance to

the Tribunals Rules of Practice and Procedure. Prior to the Hearing date all Parties had an opportunity to file a written response to the Motion. The Tribunal did not receive a written response to the Motion from Mr. Chauhan or his client Mr. Mattiuzzo.

[21] During the proceeding the Tribunal gave ample opportunity for Mr. Chauhan to address the Motion, give rationale to his request for an adjournment, and convince the Tribunal that his client was making efforts in good faith to present a case to the Tribunal. The Tribunal confirmed with Mr. Chauhan that he had read the Motion materials and asked if he wished to make an oral submission. Mr. Chauhan refused the opportunity. The onus is on the Party to be prepared to make submission on a Motion and be prepared to have meaningful participation in Tribunal proceedings.

[22] It is not enough to show up and inform the Tribunal that you might have an expert witness. Given the extent time of seven month due to the adjournment of the originally scheduled CMC the Tribunal finds that it is not acceptable to not be better prepared at this point.

[23] As the evidence on the Motion was uncontradicted, under s. 17(45) and 34 (25) of the Act., the Tribunal dismisses the appeals of Mr. Mattiuzzo without holding a full hearing.

ADM Agri-Industries Company

[24] ADM has been a flour mill in operation since 1910 on the property that is approximately 25 metres to the Site and has concerns that a residential community being built close to their facility may have a negative impact to their company. ADM operates 24 hours a day 7 days a week, with continuous truck movements and facility operation that could produce a potential noise level that could be considered to not be compatible with a residential community.

[25] Counsel for ADM and Barbertown have informed the Tribunal that the two parties continued to hold discussion in hopes of reaching a settlement but have asked the

Tribunal for a seven day hearing should they not be successful.

[26] A seven-day video hearing has been scheduled to being on **Monday, May 3, 2021 at 10 a.m.**

[27] Parties and participants 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/748102221>

Access code: 748-102-221

[28] Parties and participants 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](https://gotomeeting.com) or a web application is available:

<https://app.gotomeeting.com/home.html>

[29] 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: **(647) 497-9391** or **Toll Free 1-888-455-1389**. The **access code** is **748-102-221**.

[30] 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 hearing 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.

[31] Attachment 1 the draft Procedural Order is approved.

[32] The Panel is not seized.

[33] No further notice is required.

[34] So Orders the Tribunal.

“Steven Cooke”

STEVEN COOKE
MEMBER

“M. Russo”

M. RUSSO
MEMBER

If there is an attachment referred to in this document,
please visit 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 Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

D



Local Planning Appeal Tribunal

Procedural Order

R

ISSUE DATE: [DATE]

CASE NO(S). PL190590

LOCAL PLANNING APPEAL TRIBUNAL

A

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	ADM Agri-Industries Company
Applicant:	Barbertown Ventures Inc.
Property Location:	1707-1725 Barbertown Road
Subject:	Official Plan Amendment No. OPA 101
Municipality:	City of Mississauga
LPAT Case No.:	PL190590
LPAT File No.:	PL190590
LPAT Case Name:	ADM Agri-Industries Company v. Mississauga (City)

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T

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	ADM Agri-Industries Company.
Applicant:	Barbertown Ventures Inc.
Property Location:	1707-1725 Barbertown Road
Subject:	By-law No. BL 0162-2019
Municipality:	City of Mississauga
LPAT Case No.:	PL190590
LPAT File No.:	PL190590
LPAT Case Name:	ADM Agri-Industries Company v. Mississauga (City)

PROCEDURAL ORDER

The Tribunal Orders that:

1. The Tribunal may vary or add to the directions in this procedural order at any time by an oral ruling or by another written order, either on the parties' request or its own motion.

Organization of the Hearing

2. The video hearing will begin on May 3, 2021 at 10 a.m.
3. The parties' initial estimation for the length of the hearing is 7 days. The parties are expected to cooperate to reduce the length of the hearing by eliminating redundant evidence and attempting to reach settlements on issues where possible.
4. The parties are set out in **Attachment 1**.
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 shall be as set out in **Attachment 3** to this Order. 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 the parties' consent, subject to the Tribunal's approval, or by Order of the Tribunal.
7. Any person who intends to participate in the hearing, including parties, counsel and witnesses, is expected to review the Tribunal's Video Hearing Guide, available on the Tribunal's website (<https://olt.gov.on.ca/tribunals/lpat/>).

Requirements Before the Hearing

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 on or before March 18th, 2021 and in accordance with paragraph 21 below. A party who intends to call an expert witness must include a copy of the witness' Curriculum Vitae and the area of expertise in which the witness is prepared to be qualified.
9. Expert witnesses in the same field shall have a meeting on or before April 14th, 2021 and use best efforts to try to resolve or reduce the issues for the hearing. Following the experts' meeting the parties must prepare and file a Statement of Agreed Facts and Issues with the LPAT case co-ordinator on or before April 16th, 2021.
10. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or policy documents to be relied on at the hearing. Copies of this must be provided as in paragraph 12 below. 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.

11. 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 paragraph 12 below. A party who intends to call a witness who is not an expert must file a brief outline of the witness' evidence, as in paragraph 12 below.
12. On or before April 1st, 2021, the parties shall provide copies of their witness and expert witness statements to the other parties and to the LPAT case co-ordinator and in accordance with paragraph 21 below.
13. On or before April 16th, 2021, the Parties may provide to all other parties and the LPAT case co-ordinator a written response to any written evidence in accordance with paragraph 21 below.
14. On or before April 23rd, 2021, the parties shall provide copies of their visual evidence to all of the other parties in accordance with paragraph 21 below. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
15. The parties agree that the following acoustical model shall form the basis of any acoustical evidence in the hearing: **2019-11-05 ADM Barbertown Update.cna (update of VCL Model 2017 – 10-12 and 2017-10-13) (“the CADNA Model”)**.
16. The parties shall cooperate to prepare a joint document book which shall be uploaded to the LPAT's file share server, pursuant to the directions provided by the LPAT case co-ordinator, on or before April 23rd, 2021.
17. Any documents which may be used by a party in cross examination of an opposing party's witness may be uploaded to the LPAT's file share server, pursuant to the directions provided by the LPAT case co-ordinator, on or before the commencement of the hearing. Such documents shall be password protected and only be accessible to the Tribunal and the other parties if it is introduced as evidence at the hearing.
18. 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.*
19. A party who provides written evidence of a witness 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.
20. The parties shall prepare and file a preliminary hearing plan with the Tribunal on or before April 23rd, 2021, with a proposed schedule for the hearing that identifies, as a minimum, the parties participating in the hearing, the preliminary matters (if any to be addressed), the anticipated order of evidence, the date each witness is expected to attend, the anticipated

length of time for evidence to be presented by each witness in chief, cross-examination and re-examination (if any) and the expected length of time for final submissions. The parties are expected to ensure that the hearing proceeds in an efficient manner and in accordance with the hearing plan. The Tribunal may, at its discretion, change or alter the hearing plan at any time in the course of the hearing.

21. 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 Tribunal's Rule 7.
22. 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.

Protection of Confidential Information

23. The manner of determining what is confidential information and the hearing procedures respecting confidential information will be addressed in a subsequent LPAT Order.

This Member is [not] seized.

So orders the Tribunal.

BEFORE:

Name of Member:

Date:

TRIBUNAL REGISTRAR

Attachment 1

Parties:

Barbertown Ventures Inc.

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ADM Agri-Industries Company

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Attachment 2

Issues List

NOTE: The identification of an issue 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 Tribunal at the hearing. The extent to which these issues are appropriate or relevant to the determination of the Tribunal at the hearing will be a matter of evidence and argument at the hearing.

ADM Agri-Industries Company Issues List

1. Are OPA 101 and By-law 0162-2019 (the “**Proposed Instruments**”) consistent with and have appropriate regard for the Provincial Policy Statement (2019/2020), in particular sections 1.2.6.1, 1.2.6.2, 4.1, 4.2 and 4.6?
2. Are the Proposed Instruments in conformity with A Place to Grow, Growth Plan for the Greater Golden Horseshoe (2020), in particular sections 2.2.1.4 b), 2.2.5.8 and 5.1?
3. Are the Proposed Instruments in conformity with the policies of the Mississauga Official Plan, in particular sections 6.10.1, 6.10.1.5, 6.10.1.6, 10.3, 10.3.3 and 19.5.1d)?
4. Do the Proposed Instruments provide appropriate safeguards that minimize land use conflicts, particularly with respect to preventing “adverse effect” from noise sources such as auditory warning devices, and ensure the long-term viability of the ADM Mill?
5. Are the Proposed Instruments premature until detailed at-receptor mitigation is secured that demonstrates how land use conflicts have been minimized and how land use compatibility has been achieved?
6. Are the Proposed Instruments representative of good planning?

Attachment 3
Order of Evidence

1. Barbertown Ventures Inc.
2. City of Mississauga
3. ADM Agri-Industries
4. Reply by Barbertown/City of Mississauga

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