

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** August 31, 2021

**CASE NO(S):** PL200633

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

Appellant:	Ministry of Municipal Affairs and Housing
Subject:	Proposed Official Plan Amendment No. OP20-06-2
Municipality:	Upper Tier of Oxford
OLT Case No.:	PL200633
OLT File No.:	PL200633
OLT Case Name:	Ministry of Municipal Affairs and Housing v. Oxford (County)

**Heard:** August 31, 2021 by telephone conference call  
("TCC")

**APPEARANCES:**

**Parties**

Ministry of Municipal Affairs and  
Housing

Tracy and Jeff Feairs

**Counsel**

Mariam Awan  
Anna-Lee Beamish

Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY R.G.M. MAKUCH ON  
AUGUST 31, 2021 AND ORDER OF THE TRIBUNAL**

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[1] This Case Management Conference (“CMC”) is to consider the appeal by the Ministry of Municipal Affairs and Housing (“MMAH”) against the approval of OPA 249 by the County of Oxford (“County”). The Tribunal had previously held an informal CMC on April 16, 2021, notwithstanding that proper notification was not provided to all that were entitled to receive Notice of the CMC as had been directed by the Tribunal. The only attendees to the April 16, 2021 CMC were counsel for MMAH as well as Tracy and Jeff Feairs, who were the Applicants for OPA 249.

[2] The County had previously advised the Tribunal that it would not participate in the adjudication of the appeal.

[3] Ms. and Mr. Feairs are granted party status on consent.

[4] Marcus Ryan is granted participant status on consent.

[5] The Tribunal subsequently gave further directions to the County for service of the Notice of CMC for today’s CMC and also secured a date for the hearing of this matter on the merits to be held on **October 6, 2021** commencing at **10 a.m.**

[6] 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/575862933>**

**Access Code: 575-862-933**

[7] 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://app.gotomeeting.com/home.html)** or a web application is available:

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

[8] 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: **Toll-Free 1-888-299-1889 or +1 (647) 497-9373**. The **Access Code** is as indicated above.

[9] 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 video hearing 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.

[10] The Affidavit of Service is marked as Exhibit 1.

[11] The parties had previously agreed to exchange their list of witnesses by August 19, 2021 and Mr. Feairs has confirmed that his only witness will be Bob Hart.

[12] The parties have agreed on a procedural order and issues list for approval by the Tribunal. It is appended hereto as Attachment "1".

[13] There will be no further notice.

[14] I am not seized.

[15] It is so ordered.

*"R.G.M. Makuch"*

R.G.M. MAKUCH  
VICE-CHAIR

**Ontario Land Tribunal**

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

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

## PL200633 – Attachment 1

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## PROCEDURAL ORDER

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 **October 6, 2021** at **10 a.m.**, as follows:  
**GoTo Meeting:** <https://global.gotomeeting.com/join/575862933>  
**Audio-only telephone line:** Toll-Free 1-888-299-1889 or +1 (647) 497-9373  
**Access Code:** 575-862-933
3. The parties' initial estimation for the length of the hearing is **one (1) day**. 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 and participants identified at the case management conference 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 intending to participate in the hearing should provide a mailing address, email address and a telephone number to the Tribunal as soon as possible – ideally before the case management conference. Any person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, email address and the phone number as soon as possible.
8. 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.

### Requirements Before the Hearing

9. 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 paragraph 11 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.
10. 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 11 below. A party who intends to call a witness who is not an expert may file a brief outline of the witness' evidence, as in paragraph 11 below.
11. On or before **September 8, 2021**, the parties shall provide copies of their witness and expert witness statements to the other parties and to the OLT Case Coordinator and in accordance with paragraph 20 below.
12. On or before **September 8, 2021**, a participant shall provide copies of their written participant statement to the other parties in accordance with paragraph 20 below. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
13. On or before **September 23, 2021**, the parties shall provide copies of their reply witness and expert witness statements to the other parties and to the OLT case Coordinator and in accordance with paragraph 20 below.
14. On or before **September 24, 2021**, the parties shall provide copies of their visual evidence to all of the other parties in accordance with paragraph 20 below. If a model will be used, all parties must have a reasonable opportunity to view it

before the hearing.

15. The parties shall cooperate to prepare a joint document book which shall be shared with the OLT Case Coordinator on or before **September 24, 2021**.
16. Any documents which may be used by a party in cross examination of an opposing party's witness shall be password protected and only be accessible to the Tribunal and the other parties if it is introduced as evidence at the hearing, pursuant to the directions provided by the OLT Case Coordinator, on or before **September 29, 2021**.
17. 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.*
18. 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.
19. The parties shall prepare and file a preliminary [Hearing Plan](#) with the Tribunal on or before **September 24, 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.

20. All filings shall be submitted electronically 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*.
21. 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.**

**ATTACHMENT 1**

**LIST OF PARTIES AND PARTICIPANT**

<b>PARTIES</b>		<b>COUNSEL/REPRESENTATIVE</b>
1.	Ministry of Municipal Affairs and Housing (Appellant)	<b>Legal Services Branch</b> 777 Bay Street, 16th Floor Toronto, ON M5G 2E5  <b>Mariam Awan</b> Email: <a href="mailto:mariam.awan@ontario.ca">mariam.awan@ontario.ca</a>  <b>Anna-Lee Beamish</b> Email: <a href="mailto:anna-lee.beamish@ontario.ca">anna-lee.beamish@ontario.ca</a>
2.	Tracy and Jeff Feairs (Applicant)	<a href="mailto:jefftracy34@yahoo.com">jefftracy34@yahoo.com</a>

<b>PARTICIPANT</b>		<b>REPRESENTATIVE</b>
1.	Marcus Ryan	<a href="mailto:mryan@zorra.ca">mryan@zorra.ca</a>

**ATTACHMENT 2****Ontario Land Tribunal**  
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**Issues List of the Appellant**  
**Ministry of Municipal Affairs and Housing**

1. Are the subject lands identified in section 2 of the County of Oxford Official Plan Amendment 249 ("OPA 249") located within a *prime agricultural area*, as defined in the Provincial Policy Statement, 2020 ("PPS")?
2. Is OPA 249 consistent with policy 2.3.1 of PPS, which requires *prime agricultural areas* to be protected for long-term agricultural use?
3. Is OPA 249 consistent with policy 2.3.4.1 of the PPS, which only permits lots creation in *prime agricultural area* for the following uses, subject to criteria:
  - a. Agricultural uses;
  - b. Agriculture-related uses;
  - c. A residence surplus to a framing operation as a result of farm consolidation; and
  - d. Infrastructure.

4. Is OPA 249 consistent with policy 2.3.4.3 of the PPS, which does not permit residential lot creation in *prime agricultural areas*, except for residences surplus to a farming operation as a result of farm consolidation?
5. Does OPA 249 conform with the policies and objectives of the County Official Plan, including but not limited to sections 3.1.1, 3.1.5, 3.1.5.4, 3.1.5.4.2?
6. Pursuant to section 2.1 of the *Planning Act*, what regard should the Tribunal have for the material and information considered by the Council of the County of Oxford in making its decision to approve OPA 249, including but not limited to Report CP 2020-209 by Director of Community Planning at Oxford County, dated September 9, 2020?

**ATTACHMENT 3**  
**ANTICIPATED ORDER OF EVIDENCE**

1. Ministry of Municipal Affairs and Housing (“Appellant”)
2. Tracy and Jeff Feairs (“Applicant”)
3. Ministry of Municipal Affairs and Housing – Reply (if any)

## Attachment to Sample Procedural Order

### Meaning of terms used in the Procedural Order:

A **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. An **unincorporated group** cannot be a party and 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 case management conference (CMC), must ask the Tribunal to permit this.

A **participant** is an individual or corporation, whether represented by a lawyer or not, who may make a written submission to the Tribunal. A participant cannot make an oral submission to the Tribunal or present oral evidence (testify in-person) at the hearing (only a party may do so). Section 17 of the Ontario Land Tribunal Act states that a person who is not a party to a proceeding may only make a submission to the Tribunal in writing. The Tribunal may direct a participant to attend a hearing to answer questions from the Tribunal on the content of their written submission, should that be found necessary by the Tribunal. A participant may also be asked questions by the parties should the Tribunal direct a participant to attend a hearing to answer questions on the content of their written submission.

A participant must be identified and be accorded participant status by the Tribunal at the CMC. A participant will not receive notice of conference calls on procedural issues that may be scheduled prior to the hearing, nor receive notice of mediation. A participant cannot ask for costs, or review of a decision, as a participant does not have the rights of a party to make such requests of the Tribunal.

**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.

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 a list of reports or materials 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 supporting their opinions and conclusions and (5) a list of reports or materials that the witness will rely on at the hearing. An expert witness statement must be accompanied by an acknowledgement of expert's duty.

A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a statement of the participant's position on the appeal; a list of the issues which the participant wishes to address and the submissions of the participant on those issues; and a list of reports or materials, if any, which the participant wishes to refer to in their statement.

### **Additional Information**

A **summons** may compel the appearance of a person before the Tribunal who has not agreed to appear as a witness. A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons through a request. (See [Rule 13](#) on the summons procedure.) The request should indicate how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the information provided in the request that the evidence is relevant, necessary or admissible, the party requesting the summons may provide a further request with more detail or bring a motion in accordance with the Rules.

**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.