

January 24, 2023

Hon. Steve Clark
Minister of Municipal Affairs and Housing.
777 Bay Street - 17th Floor
Toronto, Ontario
M7A 2J3

Dear Minister Clark:

**Re: Simcoe County Official Plan Amendment
ERO Posting 019-6113
Ministry Reference Number 43-OP-221936
Severn Township - South of Division Secondary Plan Area
County Plan Mapping Should Be Modified to Reflect Legal Status of
Lands as Settlement Area**

We act for Charter LP, and a related company Silver Spring View Estates Ltd., which is the owner of the lands located west of Burnside Line, and south of Division Road in the Township of Severn, in Simcoe County. The lands are in the South of Division Secondary Plan (adopted 1995) and have been designated for residential development. We also act for Silver Spring View Estates with respect to their industrially designated lands in the Secondary Plan Area. The residential and industrial lands are together referred to as the “subject lands” in this submission.

We are requesting that the County Official Plan mapping be modified to reflect the legal status of the subject lands, and the South of Division Road Secondary Plan area, as settlement area.

While the South of Division Road Secondary Plan initially approved residential and industrial development on the lands in 1995, subsequently adopted and approved Severn and Simcoe County Official Plans have incorporated these approvals. As a result, the subject lands satisfy the words of the Growth Plan definition of “settlement area”. This means the lands are, in law, settlement area, even if they have not been mapped as such.

The province, in considering Simcoe County’s Official Plan, should modify the mapping to reflect that the subject lands are settlement area.

Of note, in 2022, the Township of Severn adopted a new Official Plan which identifies all the South of Division Road Secondary Plan lands as settlement area. This reflects the Township’s position on the status of the Secondary Plan in its municipal structure, and the history of its approvals.

The Province should modify Simcoe County Official Plan Amendment 7 to ensure that the mapping of the subject lands reflects its legal status as settlement area (community area). It should modify the County Official Plan Amendment to reflect Severn Township’s identification of the South of Division Road Secondary Plan Area as settlement area.

The Silver Spring View Estates Lands have been Identified for Development Since 1995

The principle that residential development is permitted on Silver Spring View Estates lands has been established, on a continuous basis, through a range of planning documents, since 1995. The South of Division Secondary Plan specifically designates the lands as Countryside Residential. This residential designation permits a range of housing uses as follows:

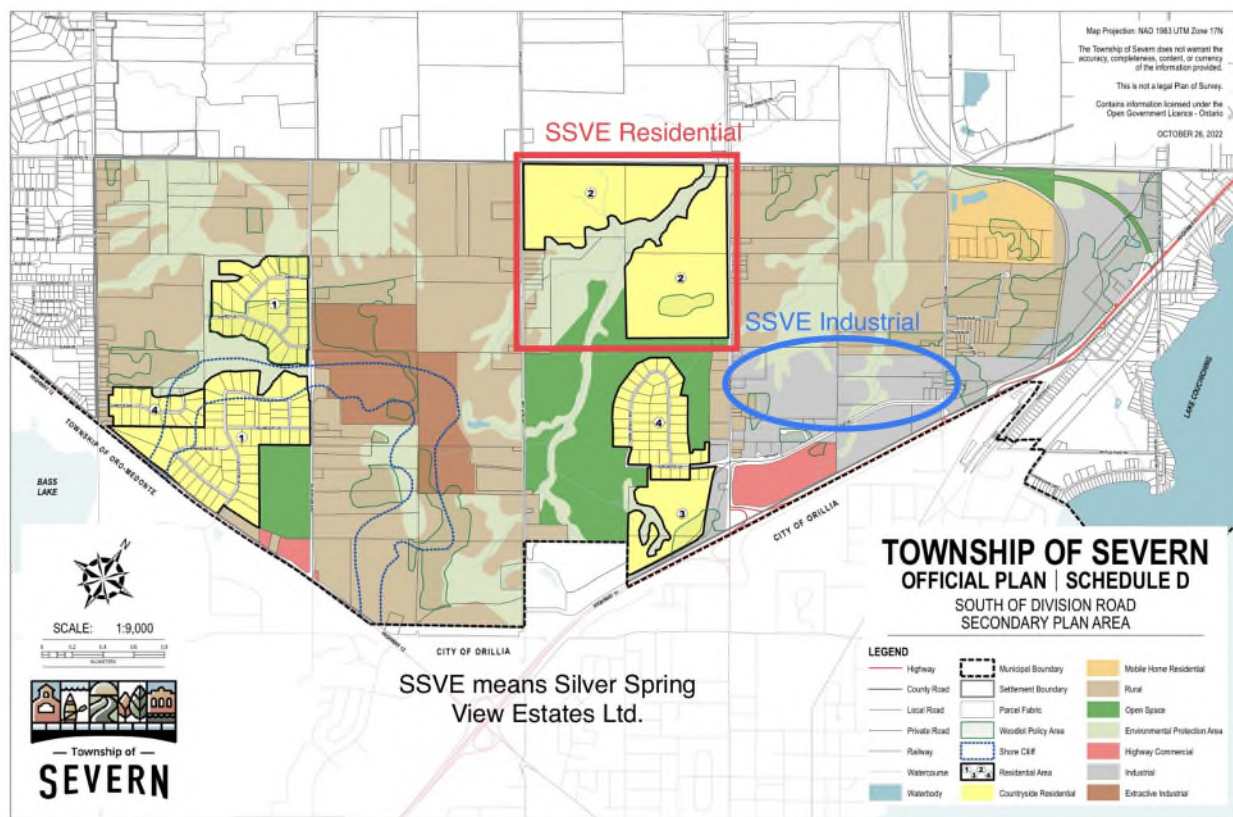
Permitted Uses

The uses permitted shall be limited to single-detached dwellings, semi-detached dwellings, linked semi-detached dwellings, townhouses, accessory apartments units, home occupations and public uses such as parks, playgrounds and day-nurseries.

In addition, Silver Spring View Estates Ltd., owns an irregularly shaped area of land that was approved for industrial uses, also in 1995, in the South of Division Road Secondary Plan area. The Secondary Plan permits a wide range of industrial uses including manufacturing, processing, warehouses, service shops, offices, service shops, motor vehicle repair garages, among other uses. Various accessory uses are permitted, including accessory sales outlets. Space extensive commercial uses are also permitted.

The image below (from the 2022 adopted Official Plan) shows the mapping from the South of Division Road Secondary Plan. It has been highlighted to illustrate the residential permissions granted to Silver Spring View Estates. They are the lands identified in yellow, with the number 2.

The Silver Spring View Estates industrial lands are approximately circled in blue in this submission, and are approved for development being designated industrial.

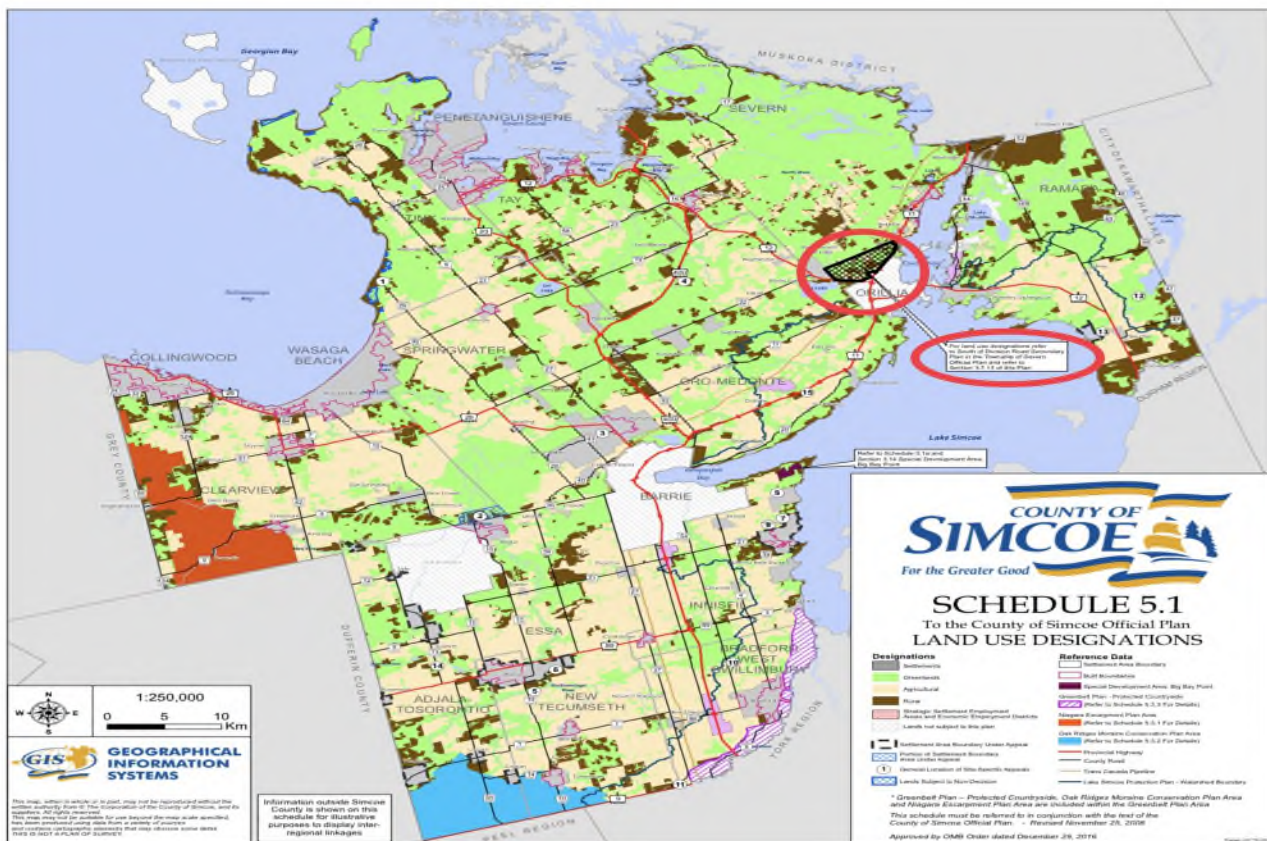


The principle of development was further reconfirmed through approval of the Severn Official Plan - incorporating the secondary plan - on April 25, 2006. The Severn Official Plan was subsequently approved by the Ontario Municipal Board in 2010.

Simcoe County Official Plan 2008 Incorporates the South of Division Road Secondary Plan Area in Severn Township In Its Land Use Mapping And Policies

In Simcoe County's 2008 Official Plan, adopted and approved under the policies of Growth Plan for the Greater Golden Horseshoe, the South of Division Road Secondary Plan is referenced, and incorporated, both in mapping and in written policy.

Below is the land use map from the County Official Plan (with the South of Division Road Secondary Plan Area and reference highlighted for this submission).



The following is the text of the relevant portion of the Simcoe County Official Plan incorporating the South of Division Road Secondary Plan by reference.

3.7.13 Development in the South of Division Road Secondary Plan area shall occur in accordance with the policies of the Township of Severn's South of Division Road Secondary Plan as approved.

The Simcoe County Official Plan was adopted by County Council on November 25, 2008. After some partial approvals, the Official Plan (including the land use plan above) received final approval from the Ontario Municipal Board on December 29, 2016.

Simcoe County Official Plan, Adopted Under the Growth Plan in 2008, and Approved By the OMB Under the Growth Plan in 2016, Designates the Subject Lands for Development

The specific policies noted above in the Simcoe County Official Plan, which permit the development of the subject lands for development, were all adopted and approved after the Growth Plan came into effect in 2006. As such, they are “lands which have been designated in an official plan for development in accordance with the policies of this Plan” (the wording from the definition of Settlement Areas in the Growth Plan).

It is important to note that the timing of the adoption and approvals of the Simcoe County Official Plan means that its policies have been approved “in accordance with the policies of” the Growth Plan for the Greater Golden Horseshoe.

In the “Goals of the Official Plan” section of the County Official Plan the following is stated:

“The Plan's provisions are aimed at the achievement of particular and interdependent goals which are derived from the County's Strategic Plan, the Provincial Policy Statement, the Growth Plan for the Greater Golden Horseshoe, 2006 as amended, prepared under the Places to Grow Act 2005...”

Thus, the Simcoe County Official Plan as of December 29, 2016, constituted an official plan in accordance with the policies of the Growth Plan.

Legal Opinion - Under the Growth Plan Definition of “Settlement Area”, the Subject Lands Are Settlement Area

The Growth Plan for the Greater Golden Horseshoe defines “Settlement Areas” as follows:

Settlement Areas

Urban areas and rural settlements within municipalities (such as cities, towns, villages and hamlets) that are:

- a) built up areas where development is concentrated and which have a mix of land uses; and*
- b) lands which have been designated in an official plan for development in accordance with the policies of this Plan. Where there are no lands that have been designated for development, the settlement area may be no larger than the area where development is concentrated.*

The subject lands are designated in the Simcoe County Official Plan for development. The County Official Plan specifically approves the development of the lands that were approved for development by the South of Division Road Secondary Plan of the Township of Severn.

When the County adopted its Official Plan in 2008, it took the position that the County Official Plan policies were brought into conformity with the Growth Plan. The Ontario Municipal Board gave final approval to the County Official Plan (including the land use designation plan schedule 5.1) on December 29, 2016 - which the Board could only do if the Simcoe Official Plan was now in conformity with the Growth Plan, by virtue of section 3 of the Planning Act. Section 3 requires that the Ontario Municipal Board, in exercising decision-making authority under the Planning Act, can only act in conformity with provincial plans, including the Growth Plan.

As a result, those aspects of the County Official Plan (including the section 3.7.13 incorporation by reference of the South of Division Road Secondary Plan of Severn Township) are now official plan policies adopted “in accordance with the Growth Plan”.

Thus, in legal terms, the subject lands satisfy the Growth Plan definition of “Settlement Areas”, based upon the wording of the definition in the Growth Plan.

Since the lands legally are “Settlement Area” under the definition in the Growth Plan, they should be mapped as such in the County Official Plan

In addition, the County land use designation mapping in schedule 5.1, indicating that the South of Division Secondary Plan lands can be developed in accordance with those policies, means that they are effectively mapped as settlement area.

It should be noted that the mapping is not definitive and exhaustive - land can also enjoy the status of settlement area based upon the words in the definition, even if not mapped as such.

Simcoe County Official Plan Mapping Should be Modified to Reflect the Legal Status of the Charter Lands as Settlement Area, With Existing Development Approvals

While a straightforward interpretation of the definition in the Growth Plan leads one to the conclusion that the subject lands are Settlement Area, there is some potential for confusion. Some may choose to conclude that the settlement area mapping in the Simcoe County Official Plan is unclear for this area - and right now, despite the policies of the plan, this mapping does not expressly label the subject lands as settlement area.

The Province should remove the potential for confusion, and revise the mapping in the County Official Plan to show the subject lands as settlement area for community area purposes, reflecting its legal status as Settlement Area. The clear expectation of the County and Township is that the subject lands are approved for development as residential and industrial, respectively, and will be developed as such.

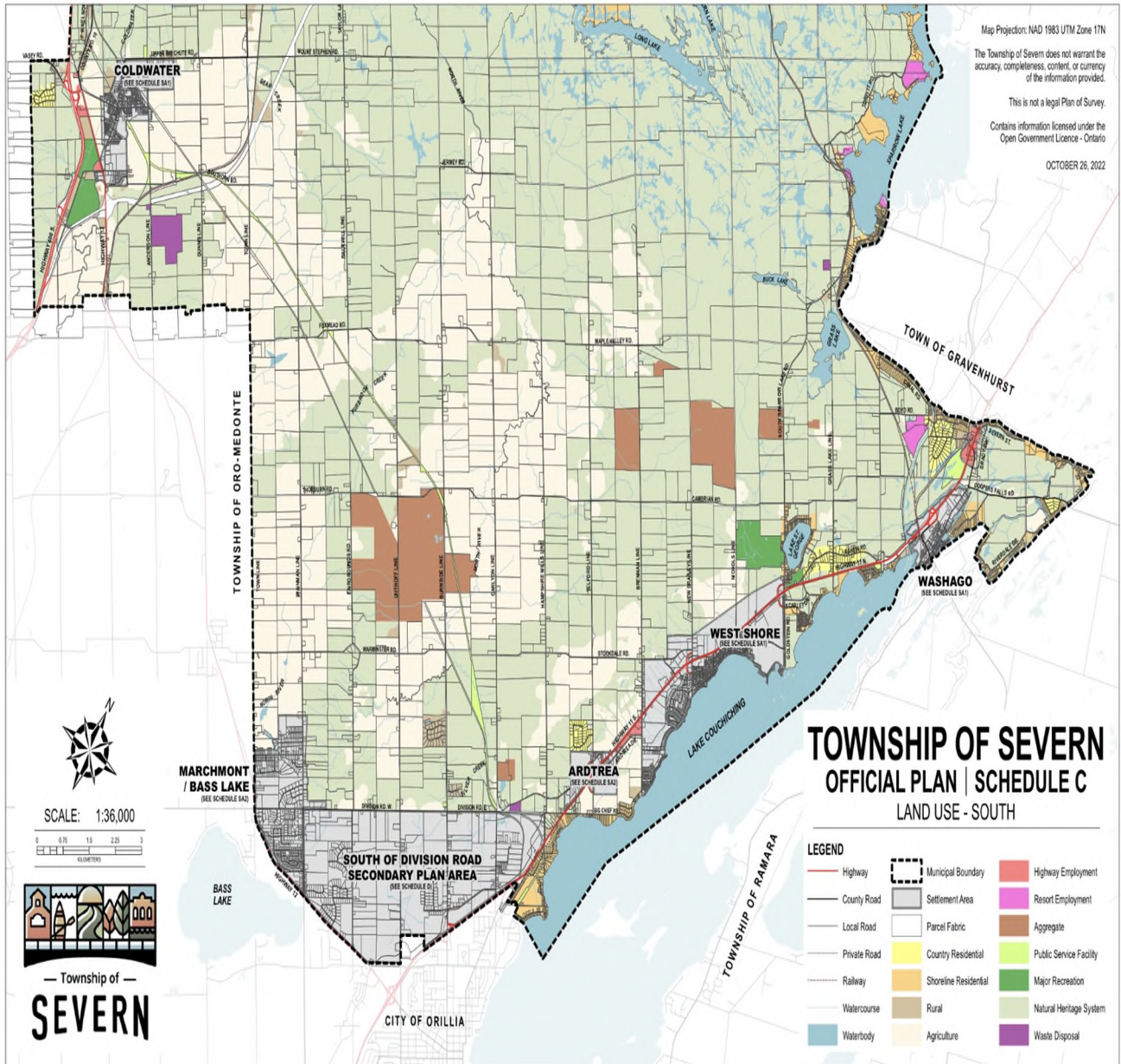
The Newly Adopted Severn Official Plan Seeks to Further Clarify the Settlement Area Status of the South of Division Road Secondary Plan Area by Expressly Mapping it as Settlement Area

In the current round of conformity exercises, and in conducting their own Municipal Comprehensive Review, Severn Township has concluded that the status of the South of Division Road Secondary Plan area, in the context of the Growth Plan framework, is not sufficiently clear. As a result, they have taken the step of clarifying the status of the Secondary Plan by mapping the lands as settlement area in the Severn Official Plan. This plan is now before Simcoe County, as the approval authority.

The map below is the Settlement and Land Use Structure plan from the Township of Severn adopted Official Plan. The South of Division Road Secondary Plan lands are now mapped as settlement area, (within the red oval added in this submission):



The Severn Land Use South plan also shows the mapping of the South of Division Road Secondary Plan as Settlement Area:



The adopted Severn Official Plan clearly shows the view of Township Council that they consider the South of Division Road Secondary Plan area to be Settlement Area. This should also be taken as a clear indication by Severn Council that they wish to see the Secondary Plan area mapped as Settlement Area in the Simcoe County Official Plan.

The Minister of Municipal Affairs should accept the position of Severn Council respecting the existing status of the South of Division Road Secondary Plan as Settlement Area, and modify the Simcoe County Official Plan to map the area as Settlement Area.

Conclusion: Simcoe County Official Plan Amendment Should Be Modified to Show the South of Division Road Secondary Plan Area in Severn Township as Settlement Area. The Province Should Amend the Mapping in the Simcoe County Official Plan to Show the Charter and Lands as Settlement Area, to Reflect Their Legal Status, and Avoid the Removal of Existing Development Rights.

The Minister should modify the Simcoe County Official Plan to reflect the position of Severn Township that the South of Division Road Secondary Plan Area is Settlement Area. This modification would reflect the legal status of the lands as settlement area, based on the definition in the Growth Plan.

The Township of Severn, and Simcoe County, have approved plans for development of the Charter Lands for residential purposes, and the Silver Spring View Estates lands as industrial. As a result of those approvals, reflected in the 2008 Simcoe County Official Plan, the subject lands are now legally Settlement Area according to the definition in the Growth Plan.

To avoid confusion, and clearly ensure those rights continue, the subject lands should be identified as Settlement Area in the mapping in the Simcoe County Official Plan. The Province can do so through modification to Simcoe County Official Plan Amendment 7.

It is significant to note that the Minister is being asked by Simcoe County to approve at least one addition to Settlement Area to reflect a recent approval. It makes sense for the Minister, at the same time, to make these changes to the mapping to reflect the longstanding approvals of development in the South of Division Road Secondary Plan, including on the Silver Spring View Estates Ltd. lands.

Yours sincerely,

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AIRD & BERLIS LLP

Hon. Peter Van Loan
Partner

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