

ISSUE DATE:

**SEPT. 23, 2010**



PL050647

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant/ Applicant: Magnolia Tree Holdings Ltd.  
Subject: Consent  
Property Address/Description: Part Lot 6 , Conc. 10  
Municipality: Municipality of Dutton-Dunwich  
OMB Case No.: PL050647-C050222  
OMB File No.: PL050647-C050222  
Municipal No. E 53/05

**APPEARANCES:**

**Parties**

Magnolia Tree Holdings Ltd.

County of Elgin

**Counsel**

I. De Rijcke

S. Gibson

**DECISION DELIVERED BY J. CHEE-HING AND ORDER OF THE BOARD**

The Ontario Municipal Board has on its own motion, pursuant to section 53(31) of the *Planning Act* (the "Act") brought a motion to dismiss the appeal of Magnolia Tree Holdings Ltd. (the "Appellant and Applicant") due to delay. The Appeal is in connection with the decision of the Land Division Committee ("LDC") of the County of Elgin ("County") to deny its severance application. This motion hearing was conducted by way of teleconferencing.

By way of brief background, the appeal was received with the Board on July 7, 2005. Subsequent to filing the Appeal, the Appellant advised the Board that there has been a dispute over the ownership of the subject lands and until the title dispute is resolved that his appeal with the Board be held in abeyance. The Applicant made an application for First Registration under the *Land Titles Act*. There were objections to the application for First Registration. The objectors were the same individuals who objected to the severance application. The Board adjourned the hearing date set for October 19, 2005, pending a resolution of the land titles dispute. Since that time the Board has communicated with the Applicant on the status of its application for First Registration

with the Registry Office. The County of Elgin has also raised some concerns over the years about the lack of resolution of the land titles dispute and wished to set a hearing date concerning this appeal. The Board has since 2005, adjourned the hearing into this Appeal several times to afford the Applicant an opportunity to resolve his Land Title dispute over the ownership of the subject lands. In an effort to bring a resolution to these matters, and set a date for the hearing into this appeal, the Board held three teleconferencing hearing events in 2010.

Section 53(31) of the *Act*, states that the Board may dismiss all or part of an appeal without holding a hearing on its own motion or on the motion of any party if it is of the opinion that,

**Section 53 (31) Dismissal without hearing**

- (45) Despite the *Statutory Powers Procedure Act* and subsection (30), the Municipal Board may dismiss all or part of an appeal without holding a hearing on its own initiative or on the motion of any party if,
- a) it is of the opinion that,
    - (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the plan or part of the plan that is the subject of the appeal could be approved or refused by the Board,
    - (ii) the appeal is not made in good faith or is frivolous or vexatious, or,
    - (iii) the appeal is made only for the purpose of delay;
    - (iv) the appellant has persistently and without reasonable grounds commenced before Board proceedings that constitute an abuse of process;

Written submissions in response to the motion for dismissal were submitted to the Board. At this hearing event, Mr. De Rijcke, counsel for the Appellant advised the Board that the delay in securing a hearing date with the Office of the Deputy Director of Land Titles, Ministry of the Attorney General is due to the large number of interested individuals/objectors who intend to attend the hearing. Staff of that Ministry is attempting to secure a large enough place to accommodate the hearing. Mr. De Rijcke could give no indication when the title dispute would be resolved even if the Land Titles hearing was held in the fall of 2010. He submitted that the Applicant has diligently pursued this

matter with the Office of the Deputy Director of Land Titles to the point that a hearing date and location are now being determined. He is requesting that the Board defer a hearing into the appeal for one year so that the ownership and title of the lands are resolved.

Mr. Gibson, counsel for the County submits that the County supports the Board's motion to dismiss the Appeal due to delay. Mr. Gibson notes that the severance application was denied by the LDC for the reason that it was, "premature until such time as an overall proposal is finalized". A second severance application was filed by the Appellant proposing a new configuration of the lands which had been the subject of the first severance application. The second severance application was granted by the LDC. It is the County's position that far too much time has elapsed and without criticizing the Appellant's efforts to secure a hearing to resolve the land ownership issue, the Appellant has not been able to meet the timelines imposed by the Board.

The Board has reviewed all the submissions relating to this matter and has determined that it is not in the public interest to continue with further adjournments. Five years have now elapsed since the Appeal was filed in July of 2005. Even if there is a reasonable prospect that the Land Title hearing process would be resolved in the Appellant's favour there is no indication as to when this may happen. It would be unreasonable to hold this hearing in abeyance for another year. This in the Board's mind constitutes delay. Assuming that the land titles dispute is resolved in his favour, the Appellant has the option of refileing the severance application with the County.

Therefore, the **BOARD ORDERS** that the appeal is dismissed and provisional consent is not given.

"J. Chee-Hing"

J. CHEE-HING  
MEMBER