

ISSUE DATE:

April 16, 2008



PL070381

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: Municipality of Dutton-Dunwich
Applicant: Peter Hentz, Clementina Hentz, Susan Laing, Jeffrey Jackson
Subject: Consent
Property Address/Description: Lots A, B, C, 22, Block R, Registered Plan 108, Park Lots 5 and 6, Registered Plan 44
Municipality: Municipality of Dutton-Dunwich
OMB Case No.: PL070381
OMB File No.: C070114
Municipal File No.: E 6/06

APPEARANCES:

Parties

Counsel*/Agent

Peter Hentz, J. Jackson and others

J. Jackson

Corporation of the County of Elgin

S. Gibson*

Municipality of Dutton-Dunwich

R. W. Dickie*

DECISION OF THE BOARD DELIVERED BY D. BARBIR AND ORDER OF THE BOARD

The matter before the Board is an appeal by the Municipality of Dutton-Dunwich from a decision of the County of Elgin Land Division Committee (LDC) that granted, with conditions, an application by Peter Hentz, J. Jackson and others (the Applicants). The Applicants wish to sever a 0.67 hectares parcel of land from the subject property for the purpose of creating a new residential lot. The Municipality is not contesting consent but wants different conditions imposed.

The subject property is located in the Hamlet of Wallacetown, south of the unopened portion of Gunn Street, west of future King Street, and east of Lunn Lane. Presently, King Street stops at the northeast corner of the subject property. Lunn Lane

stops at the northwest corner of the lot severed from the subject property in 2006 (Exhibit 1, Tab 6, Page 7).

The subject lands are designated "Hamlet Residential" and zoned "Hamlet Residential (HR) holding (h)". The surrounding uses to the north, south and west are the same. The uses to the east are industrial and utility.

The proposed severed parcel would have a lot width of 43.73 metres, a depth of 158.48 metres along the north lot line and a depth of 149.85 metres along the south lot line. The severed lot would have a public access from extended Lunn Lane (Exhibit 1, Tab 6, Page 7).

The proposed retained parcel, developed with a single-family dwelling, would have an area of 2.73 hectares.

Mr. Pol gave professional land use planning evidence on behalf of the Municipality. Mr. Jackson gave evidence on behalf of the Applicants. Mr. Loveland, clerk for the Municipality and a neighbour to the west, also gave evidence.

All parties agree that consent should be granted, but disagree about the conditions to the consent. The parties also agree that in order to create a public access for the proposed lot, Lunn Lane Street has to be extended. A parcel of land needed for the extension would be conveyed from the subject property and transferred to the Municipality's possession.

The Municipality, with Mr. Jackson's agreement, wants to extend Lunn Lane all the way to Gunn Street and proposes to convey a parcel of land 20.1 metres by 180 metres. The LDC imposed a condition to convey a parcel of land 20.1 metres by 87.1 metres which would extend Lunn Lane only to the north lot line of the proposed lot. Mr. Gibson, Counsel for the County, argued that the LDC made the best decision based on information they had at the time.

The other key disagreement was, whether or not the King Street extension should be tied up to this application. The Municipality wants to convey a 66-foot wide strip of land from the subject property along its easterly lot line for the extension. The Applicants' position is that the lands for King Street extension should not be taken away

from their property and transferred to the Municipality. The need is not established. It is not fair or reasonable to take an entire width of land from them. Neighbours to the east would get a public access without any land contribution.

Mr. Loveland stated that his and his mother's property are adjacent to the Applicants' property. When Lunn Lane Street is extended as proposed they would have a small strip of land in between their property and Lunn Lane Street. The Municipality suggested in their second report that those lands be transferred to the Municipality. Mr. Pol, under cross-examination, stated that the lands can either remain in the Applicants' possession or be transferred to the Municipality. Mr. Jackson stated that the lands should stay in their possession and be purchased by Mr. Loveland if he decides to do so.

Mr. Pol, under cross-examination, stated that the King Street extension does not have to be done now. There are no studies done demonstrating an immediate need. The condition requiring the Applicants to provide the lands entirely is not typical. Usually, the Municipality would request only a half of the width of the lands needed, and the other half would be requested from landowners on the other side of the road. He stated that the two planning reports were both drafted by him, and are conflicting in terms of the Municipality's position. The LDC based their decision on the information provided in the first report because they did not have the other report with the conditions as presented to the Board.

Based on the evidence heard, as well as the submissions of Counsel, the Board finds that the proposed severance for the purposes of a new residential lot creation is consistent with the PPS; it is in keeping with the provisions of the applicable official plan, and the zoning by-law, and represents good planning.

The Board finds that the application for consent to convey for the purpose of lot creation meets the intent of section 51(24) of the *Planning Act*.

The Board finds that all parties agree to extend Lunn Lane as per Exhibit 6. Detailed conditions below, as drafted by the Municipality, are part of this decision.

In respect to extending King Street, the Board accepts uncontested professional planning evidence from Mr. Pol and finds that the need is not established. The

Municipality did not demonstrate that the acquisition of lands is necessary at this time. If the need materializes in the future, there are other methods to acquire lands instead of removing them from the Applicants at this time.

Accordingly, the appeal is dismissed, and provisional consent is to be given as per Exhibit 1, Tab 6, Page 7, subject to the following conditions:

1. That the Applicants convey lands for a new public right-of-way to the municipality being the extension of Lunn Lane from the limit of the property westerly to Gunn Street with a slight curve, intersecting Gunn Street approximately 120 feet north of the southerly lot limit; and the 11.66 feet of land between the extension of Lunn Lane and the southerly limit of the lot abutting Part Lot 20 for a distance of approximately 209 feet be left in the Applicants possession.
2. That a one-foot reserve be placed around the entire extension of Lunn Lane except where frontages are provided to the existing and one proposed lot. Council will have the authority to remove the one-foot reserve block in the future, subject to the Applicant's entering into a servicing agreement with the Municipality.
3. That the Applicant shall extend, construct, open and dedicate the easterly end of Lunn Lane as a public road providing municipal water, surface drainage, and municipal road service to Municipal standards for the existing single detached dwelling and one additional single detached dwelling and that an agreement shall be prepared, entered into and registered against the title of the property to the satisfaction of the Municipality for the services.
4. The Municipality will assume Lunn Lane as a public road upon completion of the improvements to the satisfaction of the Municipality.
5. That the Applicants provide public road improvements to provide a temporary three-point turnaround suitable for all public vehicles at

the westerly end of Lunn Lane to the satisfaction of the Municipality, until such time as Lunn Lane is extended further.

6. That the applicant be required to pay a fee of \$500 in lieu of parkland for both the severed and retained portion.
7. That a lot evaluation be undertaken to ensure that it is suitable for a septic system.

The Board so Orders.

“D. Barbir”

D. BARBIR
MEMBER