

ISSUE DATE:

Oct. 16, 2008



PL070768

Ontario
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: Brian Allingham
Applicant: Bark Lake Waterfront Lots Ltd.
Subject: Consent
Property Address/Description: Part Lot 10, Concession 5
Municipality: Township of Madawaska Valley
OMB Case No.: PL070768-C070187, C070188, C070189
OMB File No.: PL070768-C070187
Municipal No. B-232/06(1), B-232/06(2), B232/06(3)

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Brian Allingham
Subject: By-law No. 2006-26
Municipality: Township of Madawaska Valley
OMB Case No.: PL070768
OMB File No.: R070231

APPEARANCES:

Parties

Bark Lake Waterfront Lots

Sunny Hill Camp Ltd.

Counsel

Marc Labrosse

Robert Howe

Participant

Baska Ujejski

DECISION DELIVERED BY C. HEFFERON AND ORDER OF THE BOARD

Background

Bark Lake Waterfront Lots (Applicant) was given planning permission by the Township of Madawaska Valley to sever three lots, each averaging approximately 0.85 ha in area from its estimated 34 ha parcel of waterfront land on Bark Lake. Bark Lake is

a body of water near the village of Barry's Bay, which is about 75km north of Bancroft. The Ministry of Natural Resources (MNR) has classified Bark Lake as a "moderately sensitive lake", which indicates it is a fish habitat. There are very few cottages on the lake. Most of the waterfront land is owned either by the Crown (the vast majority) or by forestry and farming interests.

Sunny Hill Camp Ltd abuts the Applicant's land on a portion of the northeast boundary and has appealed the proposal to the Ontario Municipal Board (Board). The owners of Sunny Hill Camp Ltd, Mr. and Mrs. B. Allingham, occupy the land abutting the subject property on the southwest. This approximately 3 ha parcel is the Allingham's homestead. While the Allingham homestead site has *de facto* direct waterfront access, a 0.8 ha water lot owned by the Applicant separates the Allingham site from the shoreline.

Sunny Hill Camp Ltd and Mr & Mrs B. Allingham settled with the applicant a few days before the hearing opened. The Board has received the Minutes of Settlement (Exhibit 1).

Ms B. Ujejski expressed her opposition to the proposed severance. She is co-owner of a parcel of land to the west of the subject property and is separated from the subject property by the Allingham homestead.

The Matter before the Board

The Applicant seeks consent to sever three lots (total area approximately 3.5ha) from the original 34 ha parcel. It also seeks to amend the Township of Madawaska Valley Zoning By-law to change the portion of the severed lots above the high water line from Rural to Limited Service Residential E-15 on the lands below the high water mark from Rural to "Sensitive Lake". Seasonal residential use only is permitted in a "Limited Service Residential" zone.

The consent application approved by the Township of Madawaska Valley Council, which is the subject of this appeal to the Ontario Municipal Board ("Board"), was slightly amended in order to re-locate the on-site access road further from the abutting property line. The Board was told that the purpose is to eliminate any possible impact on either the nearby trout stream or the abutting properties, and to recognize

that a portion of the subject property is normally under water. The Board finds that the modifications to the application are minor and therefore no further public notice is required.

Issues Raised by an Adjoining Landowner

At the commencement of the hearing, Ms Ujejski, an adjoining landowner, asked for party status. After considering her request in the light of the submissions of counsel for the two parties, the Board denied the request. Nonetheless, on consent of Counsel for the parties, the Board granted Ms Ujejski participant status and also allowed her considerable leeway to enable her to present her case in the best possible light.

Ms Ujejski began by requesting the hearing be adjourned until she had a chance to “familiarize herself” with the documents presented. She told the Board that she had not received proper notice of the hearing. Mr C. Cheeseman, a qualified land use planner, and Manager of Planning Services of the County of Renfrew presented evidence that the County had complied with the provisions of Regulation 197/96 (subsections 3.13 and 3.14) of the Planning Act in sending out notice of the application to the property owners within 60 metres. The Affidavit of Service in the Board’s files confirms this (Exhibit 8). Mr Labrosse, counsel for the Appellant, submitted that the request should be denied on both these grounds and on the grounds of section 63 and 64 of the OMB Rules of Practice and Procedure.

After consideration of the facts, the Board refused Ms Ujejski’s request for an adjournment.

Ms Ujejski also expressed her concern regarding an “old settlement road” that crosses several properties including her own. Contractors hired by the Applicant to rebuild a culvert over a fresh water stream that passes near the boundary between her property and the Applicant’s had apparently used it. Ms Ujejski was told that matters of trespass were outside the Board’s jurisdiction and did not, in any case, pertain to the matter currently before the Board. She also expressed her concern over the location of the boundary line separating her property from the Applicant’s. She presented no evidence on either question. Again, she was told that the location of boundary lines was not something the Board was prepared to adjudicate in the present circumstances.

Mr Whitehead, a qualified land use planner, presented land use evidence on behalf of the two parties. Ms Ujejski was allowed to question both this witness and Mr Cheeseman on their evidence.

Evidence and Findings

Mr Whitehead explained that the proposed lots will comply with the provisions of the Township of Madawaska Valley Zoning By-law in all respects (including size, shape, access, etc) once the requested zoning (Limited Service Residential – E15) is in place.

He then took the Board to several sections of the County of Renfrew Official Plan (OP) that spoke directly to the present proposal. Section 5.0 pertains to Rural lands. Subsection 5.1 confirms that low density residential as well as rural-related recreational uses are “desirable, provided (they) are appropriately located”. Mr Whitehead testified that the proposed buildings on the lots will be set back at least 30m from the high water mark of the lake, and that the three lots have a large enough area (each is at least 0.8 ha) to accommodate a septic system.

An objective of the part of the OP dealing with Rural lands is “to preserve the open space, rural character, topography or landscape of the Rural area” (OP subsection 5.2). The Board heard evidence from Mr Whitehead that the proposed development will not adversely impact any of these features.

Subsections 5.3(1) and (2) define the policies or criteria for development within lands designated “Rural” in the OP. Mr Whitehead testified that the proposed development satisfies all of these criteria or policies.

Section 9.0 of the County Official Plan addresses the question of “Sensitive Lakes”. Bark Lake is identified in the OP as a “moderately sensitive lake.” Mr Whitehead also explained that a 30metre setback from the high water mark would act as a buffer for the lake. A similar 30-metre side yard setback on one of the outside lots will buffer a nearby trout stream. This complies with the “sensitive lakes” policies under subsection 9.3 (1) and (3.a). Subsection 9.3 (3.a) also requires the setback concur with the requirements of Ontario Power Generation. OPG indicated it has no objections to the proposal provided any development is kept back at least 30 metres from the high water mark, which is the case here.

Mr Whitehead's conclusion is that the proposal complies with the intent and purpose of the County Official Plan.

He then directed the Board's attention to the Provincial Policy Statement 2005 (PPS) subsection 1.1.4.1, which addresses development of "Rural Areas in Municipalities". Subsection 1.1.4.1 (a) indicates that limited residential development is permitted provided that it is "appropriate to the infrastructure" that's either planned or available now, and that it does not require "unjustified or uneconomical expansion of this infrastructure." The proposal will not entail any public expense either to the road system or to the infrastructure; any costs associated with those improvements will be borne by the applicant.

The Municipal Septic Inspector, Ministry of Natural Resources and OPG all indicated they have no objections to the proposed development (Exhibit 4, Tab 6).

He testified that the 3-lot severance and proposed development is therefore consistent with Provincial planning policy.

Finally, a severance must also be consistent with the provisions of section 51 (24) of the Planning Act, for which the Board must have regard in weighing the evidence. In his testimony, Mr Whitehead highlighted a number of what he determined were particularly relevant provisions of this section.

Subsection 51 (24) (a) speaks to the "protection of ecological systems, including natural areas, features and functions." The Board heard testimony that special care was being taken to protect not only the lake itself but also a nearby trout stream. Mr Whitehead also testified that the proposal will not compromise the (future) orderly development of other lands in the area as required under subsection 51 (24) (h) and that the location chosen is appropriate for the proposed development (subsection 51 (24) (p)).

The Board adopts and relies on the opinion evidence of Mr Whitehead respecting land use matters.

Summary of the Board's Findings

The Board finds the proposal to be in the public interest as expressed in section 2 and subsection 51 (24) of the Planning Act and to be consistent with Provincial Policy, particularly with respect to subsection 1.1.4.1 of the PPS. The Board also finds the proposal conforms to the County Official Plan and that the rezoning complies with the general intent and purpose of the Zoning By-law. The Board therefore finds that the proposal represents good planning.

Conclusion

With respect to the consent, the Board orders the appeal is dismissed and orders provision consent to sever the three lots numbered B232/06(1), B232/06(2) and B232/06(3) is given, subject to the following three conditions:

1. That the Applicant provide a preliminary plan of survey identifying the 313.9 metre contour and showing a building envelope above that elevation. Upon acceptance of the preliminary survey, a registered plan of survey in conformity with the sketch depicting the severed lands (as attached to the amended application) to be supplied to the Secretary-Treasurer of the Land Division Committee.
2. That the owners enter into a Roads Agreement with the municipality with respect to the following:
 - a. The use of Curtis Road and a portion of the unopened road allowance for access purposes, in a form satisfactory to the municipality's solicitor
 - b. That road standards and maintenance are the responsibility of the owners and not the Municipality
3. That the owner provides a solicitor's undertaking to the Secretary-Treasurer of the Land Division Committee to convey the landlocked retained parcel of land located to the south of the proposed lot B232/06 (1) to an abutting property owner.

With respect to the By-law amendment, the Board orders the appeal against Township of Madawaska Valley Zoning By-law 2007-26 is allowed in part, and amends By-law 2007-26 as set out in Zoning By-law 2007-28, which is found at Exhibit 4, Tab 12.

So Orders the Board.

“C. Hefferon”

C. HEFFERON
MEMBER