

Issue Date:

August 6, 2008



PL080461

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:	Rideau Valley Conservation Authority
Appellant:	Township of Rideau Lakes
Applicant:	Gerald Hibbard
Subject:	Consent
Property Address/Description:	Lot 25, Conc 4
Municipality:	Township of Rideau Lakes
OMB Case No.:	PL080461
OMB File No.:	PL080461
Municipal No.:	B-153/07

APPEARANCES:

Parties

Counsel

Township of Rideau Lakes

T. J. Wilkin

Rideau Valley Conservation Authority

T. J. Wilkin

Gerald Hibbard

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. R. AKER ON
JUNE 26, 2008 AND ORDER OF THE BOARD**

Gerald Hibbard is the owner of a waterfront lot located at Part Lot 25, Concession 4, Township of Rideau Lakes-South Elmsley Ward with frontage on Bass Lake.

Mr. Hibbard made an application to sever an area of 1.12 acres with 125 feet of water frontage and containing an existing cottage. The retained parcel would be approximately 0.9 acres in size with 100 feet of water frontage and vacant of any buildings.

On March 19, 2008, the Land Division Committee of the United Counties of Leeds and Grenville granted provisional consent. The Township of Rideau Lakes

(Township) and the Rideau Valley Conservation Authority (RVCA) both appealed this decision to the Board.

POSITION OF GERALD HIBBARD (APPLICANT)

Mr. Hibbard provided the Board with a history of the subject property. His father purchased a property on Bass Lake in 1965 with a water frontage of 125 feet (Property 1) and an adjacent property in 1966 with a water frontage of 100 feet (Property 2). His father purchased four more properties to the rear of the first two lakefront properties from 1973 to 1993 (Properties 3, 4, 5 and 6) as set out in Exhibit 9 creating the total holding of approximately 2 acres. In 2006, the entire property was transferred into the applicant's name (Exhibit 12).

The evidence of Mr. Hibbard is that his father believed that he owned two separate waterfront lots and the applicant understood that they were two separate lots. He has paid two separate tax bills on the property and provided a map from the Assessment Division depicting two separate role numbers of 03358000 and 03358100 (Exhibit 13 B).

Mr. Hibbard stated that the purpose of attending at the Land Division Committee was to determine the boundaries of two relatively equal lots that would be similar in size and water frontage to the existing cottage lots along the westerly shoreline of Bass Lake.

Lastly, Mr. Hibbard stated that the Land Division Committee granted this consent as a "technical severance" and his opinion is that the proposed severance is consistent with the *Planning Act* as it will create lots of sufficient size for wells and septic systems.

POSITION OF THE TOWNSHIP AND THE RVCA

In this hearing, the Township relied on the evidence of Mr. Sheldon Laidman, the Manager of the Development Services Department of the Township of Rideau Lakes, to provide opinion planning evidence in opposition to the proposed severance.

The evidence of Mr. Laidman is that the Township Planning Committee reviewed the application on November 21, 2007 and recommended that it be denied since the lot creation did not comply with the Official Plan and Zoning By-law for lot size and

frontage. This recommendation was later endorsed by the Council of the Township and the recommendation forwarded to the Land Division Committee.

Similarly, the RVCA reviewed the application and sent a recommendation dated November 29, 2007 which states:

The RVCA participated in the review and update of the current Official Plan which requires 60 metres or 200 feet of water frontage. Many of the Municipalities in the Rideau Watershed require a minimum 90 metres of frontage in order to protect and maintain water quality. Standards for waterfront properties including frontage were established to support and maintain lake capacity and sustainable development.

And further that:

The Official Plan requires a minimum of 60 metres for water frontage. The RVCA does *not* support a precedent of allowing lots with deficient water frontage along this sensitive shoreline. We cannot support this application as presented.

In the opinion of Mr. Laidman, both the Township and the RVCA recommended the denial of the application and provided clear reasons for the denial of the application.

Mr. Laidman referred to the Objectives of the Official Plan of the Township and, in particular, Section 1. 3. 3. 3, which encourages development which is environmentally sensitive and which maintains or improves water quality and the shoreline environment. In his opinion, this objective is implemented in the policies of the Official Plan.

Mr. Laidman took the Board to Section 2. 2. 3. 3. 1 under Water Frontage which states:

As a general rule, the minimum water frontage for any new waterfront lot shall be 60 metres. This requirement may be increased where lake-specific or site-specific conditions suggest that it would be appropriate and shall be implemented through the Zoning By-law.

Mr. Laidman referred to Section 5. 2. 2. 13 under Land Division General Policies which states:

No land division shall create a lot which cannot comply with the minimum water setback and minimum water frontage requirements contained in the Waterfront Development Policies section of this Plan.

The evidence of Mr. Laidman is that the Official Plan requires a minimum water frontage of 60 metres or 200 feet of water frontage. The proposed severance is for approximately 38.1 metres or 125 feet of water frontage and the retained portion is for 30.4 metres or 100 feet. In his opinion, the proposed severance application is not in conformity with the Official Plan of the Township of Rideau Lakes.

Mr. Laidman referred the Board to Zoning By-law 2005-6 of the Township of Rideau Lakes and under Section 5.2 Waterfront Residential that requires a minimum lot frontage of 60 metres. The evidence of Mr. Laidman is that the zoning on the subject property is Waterfront Residential in the Township Zoning By-law. In his opinion, Zoning By-law 2005-6 is consistent with the Official Plan of the Township by requiring a minimum of 60 metres of water frontage.

In the opinion of Mr. Laidman, the proposed lots are in conflict with Zoning By-law 2005-6 and that minor variances will be required for relief from the minimum water frontage requirement. In the opinion of Mr. Laidman, the severance application does not meet several of the criteria set out in subsection 51(24) of the *Planning Act* and does not represent good planning.

Mr. James (Sandy) Hay appeared under summons at this hearing. Mr. Hay is the County Planner for the United Counties of Leeds and Grenville.

Under oath, Mr. Hay stated that he was at the Land Division Committee meeting of March 19, 2008. He stated that the County did not prepare a report, as there were two consistent reports from the Township and the RVCA recommending denial. If he had prepared a report, or if he had been asked at the meeting to comment on the application, he clearly stated that he would have recommended denial of the severance application. Mr. Hay commented that the Land Division Committee granted the application as a "technical severance". In his review of the *Planning Act*, there is no reference to the term "technical severance" in the *Planning Act* of the Province of Ontario.

FINDINGS AND CONCLUSIONS OF THE BOARD

The submission of Mr. Wilkin is that, since March 1970 with the first *Planning Act* of the Province of Ontario, abutting properties registered in the same name will merge

and any properties purchased in the future will, similarly, merge. Based on this submission and the transfer of one deed (Exhibit 12), the Board finds the property to be a single lot.

At the outset of the hearing, the Board advised the applicant that the application for consent must satisfy the criteria set out in subsection 51(24) of the *Planning Act*. The evidence of Mr. Hibbard was general in nature and did not address the criteria of this subsection.

Based on the evidence, the Board finds that the proposed water frontages are deficient. The Official Plan requires a minimum water frontage for any new waterfront lot to be 60 metres. The proposed lots have a water frontage of approximately 38.1 metres and 30.4 metres, respectively. Based on the evidence, the Board find the proposed water frontages are not in conformity with the intent of the Official Plan of the Township of Rideau Lakes.

Based on the evidence, the Board finds the proposed water frontages do not meet the requirement of Zoning By-law 2005-6 which requires a minimum lot frontage of 60 metres in a Waterfront Residential zone.

Based on the evidence, the Board finds that the proposed severance fails subsections 51(24) (c) and 51(24) (f) of the *Planning Act* by attempting to create substandard lots in direct conflict to the Official Plan and Zoning By-law.

Based on the evidence, the Board is not satisfied that the criteria set out in subsection 51(24) has been met.

The Board Orders that the appeals are allowed and the provisional consent is not to be given.

J. R. AKER
MEMBER