

ISSUE DATE:

December 16, 2013



PL081034

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:	Muski Properties Ltd
Subject:	Consent
Property Address/Description:	Part Lot 11, Concession 12
Municipality:	Township of Minden Hills
OMB Case No.:	PL081034
OMB File No.:	PL081034
Municipal No.:	H-108/05

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

Appellant / Applicant:	Muski Properties Ltd
Subject:	Consent
Property Address/Description:	Part Lot 11, Concession 12
Municipality:	Township of Minden Hills
OMB Case No.:	PL081035
OMB File No.:	PL081035
Municipal No.:	H-109/05

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

Appellant / Applicant:	Muski Properties Ltd
Subject:	Consent
Property Address/Description:	Part Lot 11, Concession 12
Municipality:	Township of Minden Hills
OMB Case No.:	PL081036
OMB File No.:	PL081036
Municipal No.:	H-110/05

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

Appellant / Applicant:	Muski Properties Ltd
Subject:	Consent
Property Address/Description:	Part Lot 11, Concession 12
Municipality:	Township of Minden Hills

OMB Case No.:	PL081037
OMB File No.:	PL081037
Municipal No.	H-111/05

APPEARANCES:

<u>Parties</u>	<u>Counsel/Agent*</u>
Muski Property Ltd.	T. Murphy
County of Haliburton/Township of Minden Hills	R. J. Taylor*

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. P. ATCHESON ON
DECEMBER 10, 2013 AND ORDER OF THE BOARD**

[1] This is the third prehearing by way of Telephone Conference Call (“TCC”) for the purpose of providing a status update on an appeal by Muski Property Ltd. (“Appellant”) from the decision by the County of Haliburton Land Division Committee (“County”) which refused consent applications for the property known as Part Lot 11, Concession 12 in the Township of Minden Hills.

[2] The Appellant at the time of the second TCC (October 28, 2010), had submitted the required scientific testing and analysis to the Ministry of the Environment (“MOE”). Mr. Murphy reported at that time the technical data had been submitted several months earlier, but that he has yet to receive any documentation from the MOE. He submitted that Mr. Michalski, his environment expert, has been communicating with MOE officials and is optimistic that a written response will be forthcoming in the near future. The Parties concur that it would be premature to schedule a hearing date until such time that the response from the MOE is received.

[3] Mr. Richard Taylor at the second prehearing requested partial disclosure of information which is currently available, including the test data, any correspondence between Mr. Michalski and the MOE, and confirmation of Mr. Michalski’s retainer.

[4] The Board at the second prehearing, on consent of the Parties, directed Mr. Murphy to provide the Municipality with the previously stated information by November

30, 2010. The Parties were further directed to provide the Board with a status update on this matter no later than January 31, 2011.

[5] The purpose of this prehearing is for the Parties to provide the Board with an update with respect to compliance with the Board's Order dated November 3, 2010 and to determine next steps to bring this outstanding appeal to a hearing.

[6] The Parties confirmed that the Board's directions resulting from the second prehearing had been met.

[7] Mr. Murphy indicated that he had been having difficulty in getting a final report from his consultant, Mr. Michalski. The Michalski report deals with the science and carrying capacity of the lakes in question, being Little Boshkung Lake and Twelve Mile Lake. Mr. Murphy also indicated that Mr. Michalski had been busy with other projects.

[8] The Board noted that Mr. Michalski is Mr. Murphy's expert and the onus is on him to prepare whatever document he deems necessary, noting that it had been two years since the last prehearing conference and that, in the Board's opinion, continued delays are unacceptable. That being said the sole purpose of the Board at this time is to move these long outstanding appeals forward to a full and fair hearing. .

[9] Counsel for the Municipality suggests that the difficulty in getting a final report is that it does not support Mr. Murphy applications and that this is the reason for the delays. The Board has no way at this time of determining the accuracy of this allegation.

[10] The Board noted that Mr. Taylor was always free to bring any motion he and his clients deem appropriate.

[11] The Board expressed the concern that this appeal has been dragging on and that limited progress being made by the Applicant/Appellant to bring this matter to a full and fair hearing.

[12] The Board for the purposes of clarity will provide the authority prescribed in s. 53 (31) of the *Planning Act* dealing with respect to the dismissal of an appeal without a hearing

Section 53 (31)

Dismissal without hearing

(31) Despite the *Statutory Powers Procedure Act* and subsection (30), the Municipal Board may dismiss 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 Board could give or refuse to give the provisional consent or could determine the question as to the condition appealed to it,

(ii) the appeal is not made in good faith or is frivolous or vexatious,

(iii) the appeal is made only for the purpose of delay, or;

(iv) the appellant has persistently and without reasonable grounds commenced before the Board proceedings that constitute an abuse of process;

(b) the appellant did not make oral submissions at a public meeting or did not make written submissions to the council or the Minister before a provisional consent was given or refused and, in the opinion of the Board, the appellant does not provide a reasonable explanation for having failed to make a submission;

(c) the appellant has not provided written reasons for the appeal;

(d) the appellant has not paid the fee prescribed under the *Ontario Municipal Board Act*, or

(e) the appellant has not responded to a request by the Municipal Board for further information within the time specified by the Board. 1994, c. 23, s. 32; 1996, c. 4, s. 29 (12); 2006, c. 23, s. 23 (3, 4).

Representation

(32) Before dismissing an appeal, the Municipal Board shall notify the appellant and give the appellant the opportunity to make representation on the proposed dismissal but this subsection

does not apply if the appellant has not complied with a request made under clause (31) (e). 2000, c. 26, Sched. K, s. 5 (7).

Dismissal

[\(32.1\)](#) The Municipal Board may dismiss an appeal after holding a hearing or without holding a hearing on the motion under subsection (31), as it considers appropriate. 2000, c. 26, Sched. K, s. 5 (7).

[13] Mr. Murphy proffered that he would obtain , on or before January 31, 2014, the final report from Mr. Michalski.

[14] The Board accepts Mr. Murphy's undertaking.

ORDER

[15] The Board orders that on or before January 31, 2014, Mr. Murphy is to deliver to the Board's Case Coordinator and the other Party the final Michalski report.

[16] Without limiting this direction, the Parties shall also exchange or make known what other documents or witnesses they may be relying upon 30 days prior to any hearing set for the appeals.

[17] Secondly, the Board directs that within 10 business days of the delivery of the above noted report, the Parties shall seek a hearing date for the appeals. This Order is peremptory.

[18] The member is not seized but remains available for case management purposes.

"J. P. Atcheson"

J. P. ATCHESON
MEMBER