

ISSUE DATE:

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PL090583

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

Applicant/Appellant: Paul Pianosi
Subject: Consent
Property Address/Description: 385 Flat Rapids Road
Municipality: Township of McNab-Braeside
OMB Case No.: PL090583
OMB File No.: PL090583
Municipal No. B6/09

APPEARANCES:

Parties

Township of McNab-Braeside

Paul Pianosi

Counsel

Janet Bradley

**MEMORANDUM OF ORAL DECISION DELIVERED BY J.E. SNIEZEK ON
OCTOBER 27, 2009 AND ORDER OF THE BOARD**

Paul Pianosi (the Appellant) applied for a consent to sever a 0.6 ha parcel from a 39.6 ha holding. The conveyed parcel would have a frontage of 63.7m and a depth of 104m. The retained parcel would have a frontage of 144m and an area of 39 ha.

The application was denied and appealed to this Board.

The subject lands are zoned Rural in the zoning by-law and designated "Rural" in the Official Plan.

The subject lands are commonly known as 385 Flat Rapids Road.

The Board heard evidence from Paul Pianosi (the Appellant) and Bruce Howarth, Senior Planner with the County of Renfrew.

Background

The history of the consent policies and the application provides a foundation for the Board's decision on this matter and reflects the testimony of the two witnesses who appeared before the Board.

Consent Policies

1985 plan

The maximum number of new lots created including previous lots per original holding shall be (2) lots. (Exhibit 1 tab F)

1997 Plan

The same policy as in the 1985 plan.

2008 Plan

The maximum number of new lots that can be created in a Rural designation per original holding shall be three (3) lots. A holding is defined as parcel of land including all abutting parcels under the same ownership which are subject to subdivision control or part lot control under Section 50 of the *Planning Act*. Original holding means a holding as of May 13, 1981. Above the maximum, a registered plan of subdivision shall be considered for creating the desired lots. (Exhibit 1 tab H)

(This plan was adopted by the Township of McNab-Braeside in December of 2008 and approved by the County of Renfrew except for the appealed sections in early 2009. The plan came into force and effect on March 24, 2009.)

History of the subject property

- 1980 the holding consists of Lot 10 Concession 7 and 8 (this property was jointly owned by Mr. Pianosi and Mr. Kidd)
- 1995 Mr. Pianosi and Mr. Kidd sever the property in half (Severance #1)
- 1996 Mr. Pianosi severs a parcel from his original holding (Severance # 2)
- 2009 Mr. Kidd applies to sever 4.9 ha from his original holding (which is approved) (Severance #3)

- 2009 Mr. Pianosi applies to sever 0.6 ha from his original holding and the application is denied and appealed to this Board (Severance #4)

The Board heard from Mr. Pianosi and Mr. Howarth of the bizarre series of events that unfolded at the Township's offices on the evening of March 23, 2009 and morning of March 24, 2009. After the Township's offices closed for the day on March 23, 2009, Mr. Kidd and his family set up camp outside the Township's offices. At 2:00 in the morning Mr. Pianosi arrived at the office to find that he was second in line. When the Township offices opened Mr. Kidd filed his application first and Mr. Pianosi was second. At the first hearing Mr. Kidd's application was deferred for further information on the Minimum Distance Separation relating to his existing horse barn. Mr. Pianosi's application was also deferred. At a subsequent meeting Mr. Kidd's amended application was approved while Mr. Pianosi's application was denied based upon the number of severances.

Review of the evidence

Mr. Pianosi stated that he felt that the Township should have approved his application rather than deferring it in the first instance. He was of the opinion that it was unfair to him. He stated that he did not appeal Mr. Kidd's application because he did not wish to stir up ill feelings between himself and his neighbour, Mr. Kidd.

Mr. Howarth reviewed the history of severance policies in the existing official plan and previous official plans. The number of severances is a consistent policy in all official plans. Mr. Howarth testified that the subject lands are not prime agriculture and are considered to be rural in terms of the Provincial Policy Statement (PPS). Mr. Howarth summarized the process of public consultation that preceded the development of the new consent policy that had lasted some four years. Both Mr. Pianosi and Mr. Kidd had been actively involved in the process. Mr. Howarth stated that the hard cap on severances was a reasonable approach to limit rural development that was consistent with the PPS and the policies in the new official plan. Mr. Howarth catalogued some of the concerns that the municipality had with uncontrolled rural development including costs of providing limited rural services. Mr. Howarth referred to the preferred form of development being in settlement areas and that is the policy direction of the PPS as well. Mr. Howarth indicated that the proposed consent did not meet the criteria set out in Section 51(24) of the *Planning Act* because it does not conform to the consent policies in the plan. Mr. Howarth referred to the severance policies being a death by a

thousand paper cuts. The individual applications do not create a problem in and of themselves but the cumulative impact of many applications can have severe and long lasting impacts on the rural environment and financial viability of the Township.

Board findings

Changes in land use policies specifically consent or severance policies are discriminatory. The 1997 PPS contained a policy that permitted farm retirement lots and the 2005 PPS removed that requirement. The transitional arrangements can sometimes soften the blow but when the existing farm lot severance numbers increase by one lot there is only one lot that can be created. The Township's hard cap is a realistic policy that has a coherent history in terms of past policies in the official plan; that is consistent with the PPS; and that conforms to the official plan. Mr. Pianosi should have appealed Mr. Kidd's application if he wished to argue the sequence of consent approvals. The Pianosi application clearly contravenes the severance policy cap. There are options open to Mr. Pianosi including an official plan amendment and a subdivision application.

The Board is reluctant to overturn a clear municipal policy that has a strong policy basis in favour of an appellant who may suffer a financial loss as a result. If one looks at the result of the policy both Mr. Kidd and Mr. Pianosi have the same number of parcels. The Board would effectively vitiate the new severance policy before it had a chance to be tested if it acceded to Mr. Pianosi's request for a fourth severance.

The Board dismisses the appeal that has no justification in land use terms and would contravene the official plan and would be inconsistent with the PPS and would not represent good planning.

THE BOARD ORDERS that the appeal is dismissed.

So Orders the Board.

"J.E. Sniezek"

J.E. SNIEZEK
MEMBER