

ISSUE DATE:

**Mar. 16, 2010**



PL091078

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: Janet Parsons (Roche Court Farms)  
Applicant: Jacques & Lise Bourgeois  
Subject: Consent  
Property Address/Description: 1210 Gauthier Road (Pt Lot 12, Conc 2, Parcel 2593)  
Municipality: Municipality of West Nipissing  
OMB Case No.: PL091078  
OMB File No.: PL091078  
Municipal No.: C26/09

**APPEARANCES:**

**Parties**

**Agent**

Jacques and Lise Bourgeois

Janet Parsons (Roche Court Farms)

Michael Parsons

**DECISION DELIVERED BY J. E. SNIEZEK AND ORDER OF THE BOARD**

Introduction

Jacques and Lise Bourgeois applied to sever and convey a 3.2 hectare parcel from their 31 hectare parcel legally described as Part of Lot 12, Concession 2, Parcel 2593, in the geographic Township of Springer, and commonly known as 1210 Gauthier Road, Municipality of West Nipissing. The consent was provisionally given subject to five conditions:

1. That a copy of the new survey be filed with the municipality;
2. Confirmation that all taxes are paid up to date;
3. That all conditions be met on or before October 29, 2010, being one year from the date of the giving of notice or the consent shall be deemed not to have been given as per Section 53(20) of the *Planning Act*, R.S.O. as amended;

4. That a Transfer/Deed of the land be submitted to the Secretary-Treasurer for issuance of a certificate of consent; and
5. That a notice be placed on the title of both the severed and retained lands that no further severances will be permitted.

The Consent was appealed by Janet Parsons (Roche Court Farms) a landowner and farmer in the area.

The subject lands are designated as "Agriculture" in the West Nipissing Planning Area Official Plan and are zoned A1 (Agriculture) and A2 (Rural) in the zoning by-law.

The Board heard evidence from Michael Parsons, Janet Parsons (the Appellant) and Jacques Bourgeois (the Applicant).

#### Review of the evidence

Mr. Bourgeois explained to the Board that his property is rented out to a farmer (Omer Lavergne) who takes hay off the property. There is a cellular phone tower at the rear of his property that is leased to Rogers Communications. The power line and service road to the tower provided a natural dividing line for the proposed lot. The property is also traversed by a municipal drainage pipe with two catch basins (Exhibit 1 Tab F- Tessier and Schober Drain) and a natural gas pipeline. Mr. Bourgeois explained that the area of the subject lot is very wet and that it is impractical from a cost point of view to drain the lands.

Mr. Bourgeois indicated that his intent was originally to sell the lot to a "hobby" farmer who would build a house and a barn on the property (the prospective purchaser has found other lands to purchase). Once the Applicant sold the property he would apply the proceeds to the construction of a new home on the remnant parcel.

Mr. Parsons stated that the subject lands are Class 3 lands in the Canada Land Inventory mapping (Exhibit 1 Tab A). The Ministry of Agriculture, Food and Rural Affairs states that the minimum size for an agricultural lot is 40 hectares (Exhibit 1 Tab B).

The map of the area indicates other residential and agricultural uses in the area (Exhibit 1 Tab D).

The photographs submitted by Mr. Parsons illustrate the existing hay field with the cellphone tower and power line (Photo # 1) a hayfield to the east (Photo # 2) and canola field to the west farmed by Mrs. Parsons ( Photo # 3).

Mr. Parsons presented a copy of the Minutes of the Meeting of the West Nipissing Municipal Agricultural Advisory Committee that had no objection to the proposed severance.

The Board reviewed the copy of the Planning Report of Melanie Ducharme that assumed that the proposed lot “would lend itself well to an agricultural related use, such as a greenhouse operation, nursery garden or farm implement operation.” (Board File). This is clearly not the Applicant’s intent and the condition restricting the zoning of the lot was removed by the Committee of Adjustment.

Ms. Ducharme concludes her report with the following statement: “In summary, the proposal is consistent and compatible with existing uses in the surrounding area. In reviewing the proposed request for severance, regard has been had for the Provincial Policy Statement by Section 3 of the *Planning Act* (Ontario)”.

Mr. Parsons points the Provincial Policy Statement that discourages the development of residential lots on “agricultural lands” and the letter from the Ministry of Agriculture, Food and Rural Affairs that concludes that a minimum size for a viable farm unit in the area is forty hectares.

The Parson family farms two distinct operations - Roche Court Farms operated by Mrs. Parsons – a cash crop operation and a dairy operation operated by one of their sons. They are concerned about the maintenance of the agricultural land base and the Provincial Policy Statement that protects agricultural land.

### The Board Findings

#### The Law

Section 3 (5) of the *Planning Act* states:

Policy statements and provincial plans

(5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter,

(a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and

(b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5.

The PPS contains the following implementation policy:

4.2 In accordance with Section 3 of the *Planning Act*, as amended by the *Strong Communities (Planning Amendment) Act, 2004*, a decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter, “shall be consistent with” this Provincial Policy Statement.

Ms. Ducharme states incorrectly that she has had regard for the policies of the PPS. The “have regard for” interpretation has been replaced in the current PPS with a higher standard “be consistent with”.

The PPS Agricultural Policies are set out below:

### 2.3 Agriculture

2.3.1 *Prime agricultural areas* shall be protected for long-term use for agriculture.

*Prime agricultural areas* are areas where *prime agricultural lands* predominate. *Specialty crop areas* shall be given the highest priority for protection, followed by Classes 1, 2 and 3 soils, in this order of priority.

2.3.2 Planning authorities shall designate *specialty crop areas* in accordance with evaluation procedures established by the Province, as amended from time to time.

### 2.3.3 Permitted Uses

2.3.3.1 In *prime agricultural areas*, permitted uses and activities are: *agricultural uses, secondary uses and agriculture-related uses*.

Proposed new *secondary uses* and *agriculture-related uses* shall be compatible with, and shall not hinder surrounding agricultural operations. These uses shall be limited in scale, and criteria for these uses shall be included in municipal planning documents as recommended by the Province, or based on municipal approaches which achieve the same objective.

2.3.3.2 In *prime agricultural areas*, all types, sizes and intensities of *agricultural uses* and *normal farm practices* shall be promoted and protected in accordance with provincial standards.

2.3.3.3 New land uses, including the creation of lots, and new or expanding livestock facilities shall comply with the *minimum distance separation formulae*.

### 2.3.4 Lot Creation and Lot Adjustments

2.3.4.1 Lot creation in *prime agricultural areas* is discouraged and may only be permitted for:

- a. *agricultural uses*, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations;
- b. *agriculture-related uses*, provided that any new lot will be limited to a minimum size needed to accommodate the use and *appropriate sewage and water services*;

- c. *a residence surplus to a farming operation* as a result of farm consolidation, provided that the planning authority ensures that new residential dwellings are prohibited on any vacant remnant parcel of farmland created by the severance. The approach used to ensure that no new residential dwellings are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches which achieve the same objective; and
- d. *infrastructure*, where the facility or corridor cannot be accommodated through the use of easements or rights-of-way.

2.3.4.2 Lot adjustments in *prime agricultural areas* may be permitted for *legal or technical reasons*.

2.3.4.3 The creation of new residential lots in *prime agricultural areas* shall not be permitted, except in accordance with policy 2.3.4.1(c).

## 2.3.5 Removal of Land from Prime Agricultural Areas

2.3.5.1 Planning authorities may only exclude land from *prime agricultural areas* for:

- a. expansions of or identification of *settlement areas* in accordance with policy 1.1.3.9;
- b. extraction of *minerals, petroleum resources and mineral aggregate resources*, in accordance with policies 2.4 and 2.5; and
- c. limited non-residential uses, provided that:
  - 1. the land does not comprise a *specialty crop area*;
  - 2. there is a demonstrated need within the planning horizon provided for in policy 1.1.2 for additional land to be designated to accommodate the proposed use;

3. there are no reasonable alternative locations which avoid *prime agricultural areas*; and
4. there are no reasonable alternative locations in *prime agricultural areas* with lower priority agricultural lands.

2.3.5.2 Impacts from any new or expanding non-agricultural uses on surrounding agricultural operations and lands should be mitigated to the extent feasible.

Prime Agricultural Land and Agricultural Areas are defined in the PPS.

**Agricultural uses:**

means the growing of crops, including nursery and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including accommodation for full-time farm labour when the size and nature of the operation requires additional employment.

**Agriculture-related uses:**

means those farm-related commercial and farm-related industrial uses that are small scale and directly related to the farm operation and are required in close proximity to the farm operation.

**Prime agricultural area:**

means areas where prime agricultural lands predominate. This includes: areas of prime agricultural lands and associated Canada Land Inventory Class 4-7 soils; and additional areas where there is a local concentration of farms which exhibit characteristics of ongoing agriculture. Prime agricultural areas may be identified by the Ontario Ministry of Agriculture and Food using evaluation procedures established by the Province as amended from time to time, or may also be identified through an alternative agricultural land evaluation system approved by the Province.

**Prime agricultural land:**

means land that includes specialty crop areas and/or Canada Land Inventory Classes 1, 2, and 3 soils, in this order of priority for protection.

The subject lands are Prime Agricultural Lands within a Prime Agricultural Area and as a result the following policy cannot be complied with.

2.3.4 Lot Creation and Lot Adjustments

2.3.4.1 Lot creation in *prime agricultural areas* is discouraged and may only be permitted for:

- e. *agricultural uses*, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations;

Findings

The cost of future drainage works is immaterial. The nature of the agricultural resource is clear on the CLI maps and photographs. This is a farming area with agricultural capability that would be fragmented with the creation of another residential lot.

The proposed consent would clearly contravene the policies in the PPS.

The Board Orders that the appeal is allowed and provisional consent is not given.

So Orders the Board.

“J.E. Sniezek”

J.E. SNIEZEK  
MEMBER