

ISSUE DATE:

**October 7, 2011**



PL110205

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

Applicant and Appellant: Albert and Roelofje Pacey  
Subject: Consent  
Property Address/Description: 280 Boland Road, Geographic Township of Eby  
Municipality: District of Timiskaming  
Municipal File No.: 54-C-100012  
OMB Case No.: PL110205  
OMB File No.: PL110205

**APPEARANCES:**

**Parties**

Albert and Roelofje Pacey

Ministry of Municipal Affairs and Housing

**Counsel**

Robert Dinnen

Soojin Lee

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

**INTRODUCTION**

Albert and Roelofje Pacey (the Appellants) own property on Kenogami Lake. They wish to sever and convey a 0.85 ha property of their 3.36 ha holding to their children for the purposes of constructing a seasonal residence. Their application for provisional consent was refused by the Ministry of Municipal Affairs and Housing (MMAH) and appealed to this Board.

The Board heard from three witnesses during the hearing that lasted a day – Henry Darling – the volunteer Fire Chief for Kenogami Lake, Albert and Roelofje Pacey (the Appellants) and Edouard Landry, Planner with the MMAH.

## **BACKGROUND**

The subject lands are located at the end of Boland Road – a public road maintained by the local roads board. The lands are described as Lot 9, Registered Plan 54M-349, that was approved in 1992. The proposed lot is presently vacant and has 49 m frontage on the east side of Boland Road and 77.9 m frontage on Kenogami Lake.

The retained lot has an area of 2.51 ha and has a 116.29 m frontage on Kenogami Lake and 116.29 m frontage on Boland Road. The existing retained lot contains a permanent dwelling and two accessory structures. The lot is serviced by a drilled well and domestic sewage system.

The Board heard evidence from Mr. Landry and saw photographic evidence that illustrated that the majority of the residences along Boland Road were permanent homes.

The Board accepts that the “Kenogami Lake Area” has community services such as a community hall, a fire station and garbage dump. There is a collection of commercial uses – a marina, a post office, an LCBO agency outlet, restaurant, grocery outlet, motel and marine dealer. There is also a medical clinic in the area.

The Board notes that the Kenogami Lake Area is 5 km from the boundary of Kirkland Lake, 44 km from the boundary of Englehart and 85 km from the boundary of New Liskeard. Black River-Matheson is also nearby.

The Kenogami Lake is within the Geographic Townships of Eby and Grenfell. The subject property is located in Geographic Township of Eby. It is an unorganized township with a local roads board and local services board that provide road and fire services. The unorganized area is not part of a municipality and not part of a planning area. It is covered neither by an Official Plan nor a zoning by-law. There are no building controls as well.

The Board established that the residents of the area travel to surrounding communities for services that are not present in their area.

## **POSITION OF THE APPELLANTS**

The Appellants indicate that this one cottage will have no impact on the environment or services provided by the community. It is self sufficient in terms of sewer and water services. The residents of the area utilize the area for recreational purposes in both summer and winter. If Kirkland Lake services are utilized, they pay for them through user fees at the pool or library.

## **POSITION OF THE MINISTRY**

The MMAH point to the policy led system contained in the *Planning Act* and implemented in the 2005 Provincial Policy Statement (PPS). The hierarchy of policies directs growth to first – settlement areas in cities and towns – second to rural areas and third to areas without municipal organization subject to the caveat “the focus of development activity shall be activities and land uses that relate to management or use of resources and resource-based recreational activities” (Exhibit #3 pg. 25). The development of permanent residential development or new lots that may be developed for permanent development may be permitted if part of a planning area or a comprehensive review has been conducted to determine “that the impacts of growth will not place an undue strain on public service facilities and infrastructure provided by adjacent municipalities, regions and/or the Province” (Exhibit #3 pg. 25).

## **DISPOSITION**

The Board in its decisions must be consistent with the PPS and ensure that development contributes to the economic, social and environmental well-being of the Province and its citizens now and in the future.

The Board heard planning evidence in opposition to the granting of provisional consent from the MMAH. The evidence was uncontested.

The creation of one new lot at the end of the road will not be restricted to the seasonal use because no land use controls exist to enforce such a restriction.

The development of a lot does not in the Board’s opinion constitute “resource-based recreational activity”. The seasonal or permanent resident may partake of these activities but these are ancillary uses to the main use as living accommodation. The

intent of resource-based recreational activity is to encourage uses such as hunting and fishing lodges that are dependent on the attraction of the natural environment to attract customers, not those wishing to build private accommodations in the wilderness.

The policy hierarchy directs growth to settlement areas within municipal jurisdiction or planning areas. Alternatively, limited development is allowed in rural areas but development, is restricted to resource-based recreational activity which this is not.

The Board finds that the proposed lot has the possibility to develop as a permanent residence similar to the lots along Boland Road. The impacts of such development are cumulative and can detract from development in settlement areas. There are no planning or building controls to ensure that the subject lot would be used as a seasonal dwelling.

The Ministry has consistently applied the policy to consents in unorganized territory since 2005.

**THE BOARD ORDERS** that the appeal is dismissed and the provisional consent is not given.

“J. E. Sniezek”

J. E. SNIEZEK  
MEMBER