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PL110410

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:	Collinson Farms Ltd.
Subject:	Consent
Property Address/Description:	4745 Bells Road
Municipality:	Municipality of Middlesex Centre
Municipal File No.:	B-16/10
OMB Case No.:	PL110410
OMB File No.:	PL110410

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Jon-Paul & Connie Viramontes and Collinson Farms Ltd.
Subject:	Minor Variance
Variance from By-law No.:	2005-005
Property Address/Description:	4847 Bells Road and 4745 Bells Road
Municipality:	Municipality of Middlesex Centre
Municipal File No.:	A-14/10
OMB Case No.:	PL110410
OMB File No.:	PL110411

APPEARANCES:

Parties	**Counsel**
Collinson Farms Ltd., Jon-Paul and Connie Viramontes	Barry Card
Municipality of Middlesex Centre	Andrew Wright

DECISION DELIVERED BY STEVEN STEFANKO AND ORDER OF THE BOARD

[1] Collinson Farms Ltd. ("CFL") the owner of 58.97 hectares of land in the Municipality of Middlesex Centre ("Municipality") wishes to convey 2.02 hectares to Jon-Paul and Connie Viramontes ("Viramontes"), the owners of 2.02 hectares of abutting lands south east of the CFL property. In order to complete the contemplated

conveyance, the Viramontes require variances ("Designated Variances") from the Municipality's Comprehensive Zoning By-law as follows:

(a) Permission to maintain a lot area of 4.05 hectares whereas the By-law requires 40 hectares; and

(b) Permission to maintain lot frontage of 183 metres whereas the By-law requires 300 metres.

[2] CFL applied to the Committee of Adjustment ("COA") to sever 2.02 hectares ("Severance") and the Viramontes applied for the required variances. These requests were denied. As a result, CFL and Viramontes appealed the decisions to this Board.

Viramontes Farm Operation

[3] Jon-Paul Viramontes is a full time firefighter for the City of London who works 2, 24 hour days in every 8 days. He owns the property, along with his mother, Connie. Jon-Paul's wife, Jennifer, is a full time Paramedic working in the community. Both are also long-term volunteer firefighters in the Municipality at Delaware Station.

[4] The existing Vermonters' land of 2.02 hectares was acquired by the family in 1973. Currently, clover is grown on the land and custom work is done utilizing the equipment presently owned. If the additional 2.02 hectares were acquired, a new building would be constructed on these lands to store implements, equipment and hay. The storage building on the existing land holdings would be used to increase livestock operations. The family also lives in the residence on the existing 2.02 hectares. Simply put, the Viramontes enjoy the farming activities which their respective occupations allow them to pursue and they wish to increase the size of that operation and its viability.

Positions of the Parties

[5] Mr. Jay McGuffin provided expert land use testimony in support of the severance and variance relief sought. In his view, inter alia, the consent was a minor boundary adjustment for purposes of the 2005 Provincial Policy Statement ("PPS"), the County of Middlesex Official Plan ("County OP") and the Municipality's Official Plan ("Municipal OP"). He was also of the view that the Severance was in conformity with the Municipal OP which seeks, as one of its goals in s. 2.1, "To enhance the viability of farm

operations wherever possible to ensure their continued economic strength". In relation to the Designated Variances, he was of the view that the tests set out in subsection 45(1) of the *Planning Act* ("Act") were met and he pointed out as well, that, according to the Statistics Canada Census of Agriculture (2008), farms between 4 and 28 hectares make up 23.9% of all farms in Ontario.

[6] Mr. Benjamin Puzanov, a planner with the Municipality, provided expert land use testimony in opposition to the relief requested. In his opinion, there was no assurance that the severed parcel would remain protected for long term agricultural use as prescribed by s. 2.3.1 of the PPS nor did he concur with the suggestion that the proposal is a minor boundary adjustment as referred to in the PPS, the County OP and the Municipal OP. In relation to the Designated Variances, he opined, among other things, that the relief requested did not meet the intent and purpose of the County OP, the Municipal OP (collectively the "Official Plans") or the Municipality's Comprehensive Zoning By-law ("Comprehensive ZBL") which state that large agricultural parcels should be promoted and fragmentation discouraged.

Issues

[7] The issues to be determined are whether the Severance is consistent with the PPS and complies with subsection 51(24) of the Act, specifically subsection 52(24)(e) which deals with official plan compliance, and whether the Designated Variances meet the 4 tests set out in subsection 45(1) of the Act.

Analysis and Discussion

(A) Severance

[8] Although the PPS, in s. 2.3.3.2 states that "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", it is agreed that in order for the Severance application to succeed, it must be considered a "minor boundary adjustment" within the definition of "*legal or technical reasons*" in the definition section of the PPS.

[9] There is no question that the Severance will create a boundary adjustment; the question is however, whether the boundary adjustment is minor.

[10] Mr. McGuffin suggested that the word minor should be interpreted in the planning sense of the word, namely, whether the Severance created an adverse impact and whether it was too large a parcel. In his view, there was no adverse impact and, from an order of magnitude perspective, the severed parcel represents only 3% of the land owned by CFL. Accordingly, he concluded that the Severance was indeed minor and therefore a minor boundary adjustment. I concur with the approach adopted by Mr. McGuffin, but I am unable to accept his conclusion.

[11] The Divisional Court in *Vincent v. DeGasperis*, [2005] O.J. No. 2890, commented on what was considered “minor” when dealing with subsection 45(1) of the Act. Justice Matlow stated at paragraph 12:

> A minor variance is, according to the definition of “minor” given in the Concise Oxford Dictionary, one that is “lesser or comparatively small in size or importance”. This definition is similar to what is given in many other authoritative dictionaries and is also how the word, in my experience, is used in common parlance.

[12] When I apply the language of Justice Matlow to the phrase “minor boundary adjustment” and to the parcels resulting from the proposed Severance, it is true that only 3% of the CFL land is being conveyed. However, the parcel being acquired represents a 100% increase to the Viramontes’ land holding. I do not consider this to be comparatively small in size. The doubling of one’s acreage is, in my view, an acquisition of significance.

[13] The phrase “minor boundary adjustment” is also found in s. 4.5.3.4(b) of the County OP which states that “consents involving minor boundary adjustments shall be considered....” and in s. 10.3.2.1(a) of the Municipal OP which states that “Severances relating to minor boundary adjustments may be considered”. The use of the same phrase “minor boundary adjustment” establishes, in my view, consistency between the PPS and the Official Plans in relation to agricultural severances. It follows therefore that the same interpretation of the phrase should be applied throughout. When I do, I am not persuaded that the Severance represents a minor boundary adjustment, either for purposes of the PPS or the Official Plans.

[14] In my opinion, it is also important to underscore what I believe to be the general intent and purpose of the County OP and the Municipal OP with respect to agricultural areas. Section 3.3.2 of the County OP states in part:

> In the Agricultural Areas, farm parcels shall remain sufficiently large to ensure flexibility and the economic viability of the farm operation. The creation of parcels of land for agriculture of less than 40 hectares shall generally not be permitted.

And s. 10.3.2.4 of the Municipal OP reads as follows:

> It is the policy of this Plan that farm lot size shall be sufficiently large to create large continuous farming blocks and maintain long term flexibility to adapt to future changes in agriculture, and to avoid the unwarranted fragmentation of farm land.

[15] These provisions, in my estimation, reflect the very clear direction of the County and the Municipality to have larger farm parcels as opposed to parcels 2-4 hectares in size. What is proposed is inconsistent with that policy direction.

[16] Based on the foregoing, I am not satisfied the Severance is consistent with the PPS or complies with Section 51(24) (c) of the Act.

(B) Designated Variances

[17] Having concluded as I have, it may be unnecessary to comment on the Designated Variances and their compliance with Section 45(1) of the Act. In the interest of completeness however, I will do so, but in a more limited fashion.

[18] In terms of maintaining the intent and purpose of the Official Plans, my comments above reflect my view that the Designated Variances do not meet this test.

[19] In relation to the Comprehensive ZBL, its intent and purpose is not, in my opinion, simply to protect the agricultural community, as suggested by Mr. McGuffin, but rather, to do so by encouraging and promoting farm parcels of 40 hectares in size. Farm viability, in my view, has a far greater chance of being achieved by having a 40 hectare parcel as opposed to one being 4.4 acres in size. In that regard, I would note the evidence of Mr. Viramontes when he acknowledged that he has generated more revenue from custom work than from farming. I am not persuaded that the variance relief sought meets this test.

[20] In relation to whether the Designated Variances are minor, I would again refer to the DeGasperis case and the comments of Matlow J. In paragraph 12 of that decision, he went on to say:

> It follows that a variance can be more than a minor variance for two reasons, namely, that it is too large to be considered minor or that it is too important to be considered minor. The likely impact of a variance is often considered to be the only factor which determines whether or not it qualifies as minor but, in my view, such an approach incorrectly overlooks the first factor, size. Impact is an important factor but it is not the only factor. A variance can, in certain circumstances, be patently too large to qualify as minor even if it likely will have no impact whatsoever on anyone or anything.

[21] Even if I accept the argument that the variances do not create any adverse impact, I am not satisfied that doubling the size of the Vermonters' parcel can realistically be considered minor for purposes of Section 45(1).

[22] Lastly, since the Designated Variances do not meet the intent and purpose of the Official Plans or the Comprehensive ZBL and cannot be considered minor, they surely cannot be considered desirable for appropriate development.

Disposition

[23] Based on all of the foregoing therefore, provisional consent for the Severance is not granted and the Designated Variances are not authorized. The appeals are therefore dismissed.

[24] It is so ordered.

"Steven Stefanko"

STEVEN STEFANKO
VICE-CHAIR