

ISSUE DATE:

**December 20, 2012**



PL120645

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

Applicants:	Blair and Elizabeth Armstrong
Appellants:	Ann McClure & Robert Partidge
Subject:	Consent
Property Address/Description:	Lots 8 & 9, Concession 1
Municipality:	Township of Rideau Lakes
Municipal File No.:	B-171-11, B-170-11
OMB Case No.:	PL120645
OMB File No.:	PL120645, PL120646

**APPEARANCES:**

**Parties**

Blair and Elizabeth Armstrong

Robert Partridge and Anne McClure

**DECISION DELIVERED BY R. G. M. MAKUCH AND M. C. DENHEZ  
AND ORDER OF THE BOARD**

[1] In this severance dispute, Blair and Elizabeth Armstrong ( "Applicants"), who owned a property of 112.4 acres, applied to sever two new lots of 3.7 acres each, with some 400 feet of frontage on Big Rideau Lake, in the Township of Rideau Lakes ("Township"). The retained lot would be 105 acres, with 800 feet of frontage on the lake.

[2] The consents for the severances were granted by the relevant consent authority of the United Counties of Leeds and Grenville, subject to conditions which had been recommended by agencies circulated on the application. Anne McClure and Robert Partridge (neighbours), owners of a nearby farm, appealed those consents to the Ontario Municipal Board ( "Board"). Their property is subject to a right-of-way leading to the Applicants' property, along with 17 other properties.

[3] The neighbours said they were not opposed in principle to creation of the two new lots. Their “sole objection” was to the expected increase in use of the right-of-way over their lands, to provide access to these two new lots. They said it represented an unreasonable increase, and that there had been previous problems with vehicles driving too quickly, resulting in the killing of some of their farm animals.

[4] At the hearing, neither side was represented by counsel. Planner Michael Dwyer of the Township's Development Services Department gave expert evidence in support of the applications, under summons from the Applicants. The Township did not otherwise attend. The neighbours called no witnesses other than themselves.

[5] The Board has carefully considered all the evidence, and the submissions of both sides. The Board concludes that the applications should succeed, because they meet the criteria of the *Planning Act* (“Act”). The details and reasons are set out below.

[6] The applicable criteria for approving consents for severances are outlined in separate sections of the Act. The relevant provision for consents, s. 53(12), refers to the criteria in s. 51(24):

...Regard shall be had, among other matters, to the health, safety, convenience and welfare of the present and future inhabitants of the municipality and to,

- (a) The effect of development... on matters of provincial interest...;
- (b) Whether the (proposal) is premature or in the public interest;
- (c) Whether the plan conforms to the Official Plan...;
- (d) The suitability of the land for the purposes...;
- (e) (Highways)
- (f) The dimensions and shapes of the proposed lots;
- (g) The restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on the adjoining land....
  
- (h)-(l) (Natural resources, floods, services, schools, land dedications, energy)

[7] The Act also deals with whether the transaction should proceed instead by way of subdivision; but that suggestion was not made at the hearing. In the absence of new

roads or other public facilities which might normally require the subdivision process, the Board finds no need to proceed by way of subdivision.

[8] The expert evidence of the planner Mr. Dwyer was uncontradicted. He gave the Board an overview of the relevant planning policies, as well as a thorough review of the applications. Neither its designation under the Township's Official Plan (OP), nor the Zoning By-law prohibited the severances. As well, both the proposed lots and retained lot met the minimum frontage and lot size. In short, there was no problem with the applications under either the OP or zoning.

[9] None of the commenting authorities, including the Rideau Valley Conservation Authority (Rideau Waterway Development Review Team), Parks Canada, and the Ministry of Natural Resources – who were all circulated on the applications – had any objections to these applications, provided that their requested conditions were included.

[10] Access to the property is via a private road (R28), over lands owned by the neighbours. There is now a gate on that road, which allows access only to those entitled to use it. The Board was told that the gate was installed subsequent to a Court Order issued in legal proceedings that arose in another context.

[11] However, Mr. Dwyer confirmed that development of new lots, with private access, is permitted under the Zoning By-law, and that infill development in the municipality is permitted on existing private roads (and that it is, in fact, quite common). He added that the proposed lots are consistent with the Provincial Policy Statement.

[12] The “sole objection” (as the neighbour Mr. Partridge put it) was that new lots should not be created, if their access would use the existing right-of-way across their property. “I worry”, said Mr. Partridge, “about this increase leading to further endangerment of our livestock.... I would prefer no increase in the number of property owners going across our property.”

[13] On consideration, the Board finds that the planning documents are of no assistance to the neighbours' appeal. As for interpreting the deed creating and granting this right-of-way, that document (which was not in evidence) is outside the purview of this Board.

**ORDER**

[14] Accordingly, the appeals are dismissed and the Board hereby grants provisional consents to the severances, subject to the same conditions imposed by the decision of the consent granting authority of the United Counties of Leeds and Grenville.

“R.G.M. Makuch”

R.G.M. MAKUCH  
MEMBER

“M.C. Denhez”

M.C. DENHEZ  
MEMBER