ISSUE DATE:

July 15, 2013

PL121295

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:	Helga Henrich
Subject:	Consent
Property Address/Description:	602 Shunsby Road, (Sesekenika)
Municipality:	Upper Tier of Timiskaming
Municipal File No.:	54-C-120005
OMB Case No.:	PL121295
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A P P E A R A N C E S :

Parties	**Counsel**
Helga Heinrich	W. Ramsay
Ministry of Municipal Affairs and Housing	J. F. Paquin, S. Lee

DECISION DELIVERED BY M. C. DENHEZ AND ORDER OF THE BOARD

INTRODUCTION

[1] This severance was proposed in the midst of a collection of older buildings in "unorganized territory" near Highway 11, beyond the western municipal boundary of the Town of Kirkland Lake (the "Town") in the northern Ontario district of Timiskaming. Longstanding occupants wanted to convert 99-year leases into fee simple title.

[2] Helga Heinrich (the "owner") owns shorefront property. Over fifty years ago, occupants agreed to split the use of that property in five: the then owner used one portion, and four other households each held a portion under a 99-year lease (transacted years before legislation restricted that practice). For at least as many decades, each of the five households also had a seasonal cottage on its portion. Two cottages have now been winterized into all-season dwellings.

[3] The owner now wanted to sever her portion from that of the four lessees. She applied accordingly. The five portions would continue to be on private sewer and water services, and the local health authority had no objection. However, planning approval in this unorganized territory was required from the Ministry of Municipal Affairs and Housing (“MMAH”). MMAH turned down the application, calling it contrary to the Provincial Policy Statement (PPS). The owner appealed to the Ontario Municipal Board (the “Board”).

[4] At the hearing, the owner was represented by one lawyer, and MMAH by two. Each side was supported by expert planners, namely Jeff Celentano and Wendy Kaufman respectively; a total of five officials came from Toronto, to prevent development where they said it should not go. MMAH's planner suggested that even the existing buildings were not "legitimate".

[5] In response, counsel for the owner challenged the very notion that the policy framework of Ontario planning could take such a negative view, in the case of longstanding existing buildings in northern Ontario. These were extenuating circumstances, he said, which were unanticipated by the PPS, and which merited accommodation.

[6] The Board has carefully considered all the evidence, as well as the submissions of counsel. The Board finds that this application is contrary to the PPS. The PPS did not anticipate development in this area – including severances – unless that development was "resource-based". A line of previous Board decisions held that although lakes are a "resource", the PPS nonetheless imposed severe restrictions on residential uses in unorganized territory.

[7] The Board does not dispute the presence of extenuating circumstances; indeed, some are compelling. Those pertain in particular to the fate of the existing buildings. However, rightly or wrongly, the 1996 PPS and its successors took no apparent account of such factors. They did not make allowances for local circumstances; they did not even consider the sustainability of the building stock generally. Whatever the merits of that treatment, and notwithstanding the eloquence of counsel for the owner, the Board is statute-bound to render decisions consistent with the PPS. The Board is hence compelled to dismiss the appeal. The details and reasons are set out below.

PROJECT AND HISTORY

[8] Before the hearing, the owner's planner produced a witness statement (Exhibit 2) suggesting that perhaps the owner was not an owner at all, but rather a lessee "under a long-term lease from the Crown". The application for the severance, however, clearly identified her as "owner", and that is how both sides dealt with the matter at the hearing. The Board proceeds accordingly.

[9] Five households share this property on Sesekinika Lake. The boundaries of the respective portions were defined by leases which still have decades to run. That arrangement is not new. One lessee, Clifford Doiron, said he acquired his leasehold, already in existence at the time, when he moved there (seasonally) in 1957. Though one cottage was built later (in the 1960's) on another household's portion, the other cottages were there before he arrived. Of the five, two have now been winterized; the others, including the owner's, are seasonal. This property is on Shunsby Road, a dead-end off busy Highway 11.

[10] The purpose of this consent application, said the owner's planner, was to "put title in order, to permit transfer". He called it a "technical severance, to put lot lines underneath existing built form".

[11] In the Board's view, it would also do more than that. By converting one or more leaseholds to fee simple, a severance would provide more security to occupants like Mr. Doiron, who had invested in winterizing his dwelling. An owner who had invested – or proposed to invest – in improving a summer cottage (e.g. winterizing) could be expected to prefer title to the property, rather than a leasehold (even if the latter was decades long). The Board notes, parenthetically, that the occupant who testified about the merits of the severance was not the owner, Ms. Heinrich, but a lessee who now had such an all-season dwelling, Mr. Doiron. The application also identified Mr. Doiron as the prospective transferee of the severed parcel.

[12] The property is in the unincorporated geographic township of Maisonville which, like many geographic townships in northern Ontario, is outside municipally organized territory. Maisonville is said to have about a hundred permanent residents, and perhaps 250 seasonal residents. It does have a Local Services Board under the Ministry of Northern Development and Mines, to administer a volunteer fire department, and a

library. It also has a Local Roads Board, which administers roads under the *Local Roads Boards Act*, under the Ministry of Transportation. An e-mail from that Ministry says Shunsby Road is not a public road.

[13] Despite being in "unorganized territory", eight kilometers west of Town limits (and 25 minutes from the centre of Kirkland Lake), the subject property and its environs are hardly the epitome of isolation in the bush. A 400 metre-wide space separates the lake from Highway 11, and that space has a considerable human presence: it contains not only the five-part subject property and its structures, but also three dwellings on deeded lots northeast of the subject property, while south of the property is the River Run Resort, with fully 26 structures. The area has electricity, and for good measure, a pipeline crosses the space. The Ministry of Natural Resources reported that there may be a pit or quarry nearby, though it was not considered relevant for planning purposes.

[14] In short, this resembles a *de facto* hamlet. It has for years. Elsewhere on Sesekinika Lake, the owner's planner characterized the area as a "fairly well-developed lake in terms of shoreline development".

[15] On the other hand, the area has no municipal government or planning board, Official Plan (OP), Zoning By-law, or Ministerial Zoning Order. The applicable planning documents are limited to the PPS and the Growth Plan for Northern Ontario ("GPNO").

[16] MMAH said a severance here, with potentially more to follow on this lot or neighbouring ones, was objectionable on several grounds. The first and most important, it said, was that the PPS opposed development in this unorganized territory, except for "resources". MMAH added that this lot creation would put an unspecified "strain on facilities", and would not contribute to the municipal tax base. Finally, MMAH said this private road was inappropriate. The conclusion, said MMAH's planner, was that the Board should not "legitimize existing development and set a precedent for subsequent applications".

[17] The applicable criteria for approving consents for severances are outlined in separate sections of the *Planning Act* (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)

[18] The glossary at PPS s. 6 adds that "creation of a new lot" is included as a form of "development".

[19] MMAH said the application ran contrary to the Provincial interest, as expressed at several sections of the PPS. First, it was outside a settlement area, whereas PPS s. 1.1.3.1 stated that "settlement areas shall be the focus of growth".

[20] MMAH also argued that since residents outside municipal boundaries did not pay municipal taxes, this "development" ran counter to PPS s. 1.1.1(a), which calls for:

> Efficient development and land-use patterns which sustain the financial well-being of the Province and municipalities….

[21] Further, PPS s. 1.1.5 deals specifically with "rural areas and territory without municipal organization". Section 1.1.5.1 indicates no interest in development there *unless* it is resource-based: in such areas,

> The focus of development activity shall be activities and land uses related to the management or use of resources and resource-based recreational activities.

[22] For that matter, if the "resource" in question is within reasonable distance of municipal boundaries, development activity would be confined to "management or use"

of such resources – *not* all-season dwellings. Persons involved in such "management or use" would presumably live elsewhere, *within* municipal boundaries, and commute:

> In areas adjacent to and surrounding municipalities, only development that is related to the management or use of resources and resource-based recreational activity shall be permitted….

[23] MMAH said this area was "adjacent to a municipality", so only "resource-based" development was permissible, not permanent dwellings.

[24] The PPS provides, at s. 1.1.5.3, a single exception to the supposed prohibition on all development activities except "resource-based" ones. That is where a planning process is already underway, whereby the property is both (a) part of a “planning area”, and (b) there has been a "comprehensive review" of growth impacts. However, that exception does not apply here: the property falls outside a "planning area", and there has been no "comprehensive review".

[25] "Permanent residences", the MMAH planner concluded, "are not permitted adjacent to municipalities unless the tests of 1.1.5.3 are met".

[26] Counsel for the owner replied that the current situation deserved to be accommodated, and that its unique combination of circumstances was unanticipated by the PPS. That combination was:

- an established community,
- in existence for a half-century,
- with 99-year leases, which were no longer in favour under the statutes, and which hence deserved to be replaced.

[27] He added that in order to address MMAH's concern about establishing a precedent, a condition could be attached to the severance, specifying that no future severances would occur at this property.

ANALYSIS

[28] On consideration, the Board attaches more weight to some arguments than others. The Board will not dwell on the question of road access, and the supposed "strain on facilities", because the main issue – and ultimately the pivotal one – was the question of PPS compliance.

[29] The PPS is binding: under s. 3(5) of the Act, decisions of approval authorities, and of this Board, "shall be consistent" with the PPS. Counsel for MMAH cited the Board decision in *Menkes Gibson Square Inc. v. Toronto (City),* [2008] O.M.B.D. No. 621, which referred to:

> the central and supreme role of a provincial policy-led planning system. The system not only assumes but in fact requires that all the players in the system march in step with policy directions delineated in the PPS and the various provincial plans.

[30] As for the PPS requirement (s. 1.1.5.3) that development outside municipal boundaries be "resource-based", counsel for MMAH made the following submission:

> The PPS explicitly prohibits lot creation in unorganized areas adjacent to and surrounding municipalities. While there are exceptions to this prohibition, none are applicable to the application…. Development is to be limited to those activities that are geographically bound – particularly, the exploitation of fixed natural resources….

[31] Counsel for the owner replied that the current situation had been unanticipated by the PPS. He was incredulous that the PPS could not accommodate the established "built form" of a collection of buildings that had been part of the northern Ontario landscape for decades. MMAH countered that addressing these leaseholds and their circumstances was irrelevant.

[32] Those conflicting propositions call for a closer examination of the PPS, in context. The issue is whether, in the overall scheme of the Provincial planning documents, it is possible to make allowance for these specific circumstances.

[33] First, the Board has little hesitation in concluding that, geographically, the PPS provision applies here. At eight kilometers from town limits, this proposal is in

unorganized territory "adjacent" to a municipality: eight kilometers sounds like a substantial distance in some parts of Ontario, but not in the north. Indeed, in the Board decision of *Angus v. Rainy River (Town),* 2012 O.M.B.D. No. 15, the property in question was even further from the municipal boundary (10 kilometers), but was still held to be "adjacent".

[34] Next, the Board is compelled to agree that, substantively, the PPS plainly opposes "development" here (except "resource-based"); and lot creation is listed as a form of "development". That, at first glance, would appear to end the matter.

[35] However, the Board finds more to this case than meets the eye. The first issue pertains to the definition of "resource". The second distinctive issue is that this case addresses an existing collection of buildings at least a half-century-old. Those aspects will be discussed in turn.

[36] Concerning the definition of "resources", most Ontarians would consider lakes not only "resources", but essential ones. They are part of the collective psyche of the province. Indeed, it was argued in several Board cases that if PPS s. 1.1.5.3 permitted development for "resources and resource-based recreational activity" (even if only exceptionally), then necessarily, this would allow "development" like severances along such an important "resource" as lakefront property. Counsel for MMAH anticipated that proposition:

> The threshold issue before the Board, then, is whether the proposed development relates to "management or use of resources" or "resource-based recreational activity". Unless the proposal falls within one of these categories, it is explicitly barred by 1.1.5.3.

[37] However, counsel added fairly that "resource-based recreational activity" is not a defined term. MMAH did, nonetheless, cite several Board decisions addressing the ambit of s. 1.1.5.3. The applicant's side did not.

[38] First, however, the Board finds it useful to distinguish at least five different categories of development, with different implications:

a) Construction of a new all-season dwelling;

b) Construction of a new recreational (seasonal) cottage;

c) Improvement (renovations, additions) to an existing structure, without changing its essential character/use (e.g. a seasonal cottage remains seasonal);

d) Work on an existing structure that does change its character/use (e.g. converting a seasonal cottage to an all-season principal residence by winterizing it); and

e) Severances with no immediate construction or renovations attached (the PPS declares severances to be a form of "development" in their own right, notably because they are often a stepping-stone to the kinds of physical development above).

[39] For category (a), i.e. construction of new all-season dwellings in unorganized territory, the planning framework is unequivocally negative, unless the dwelling is "resource-based". In the Board case of *Sare v. Sibley (Unorganized Township),* [1997] O.M.B.D. No. 584, the proposal was for a subdivision in unorganized territory, within reasonable distance of a municipality. The Board turned it down. The Board's rationale cited apprehensions about otherwise-normal residences which could make free use of municipal services:

> People who choose to live within easy reach of a municipality that provides a full range of services and facilities but escape the burden of taxation to support those services and facilities are in effect externalizing their costs.

[40] Category (b) concerned less intensive development, namely new seasonal cottages in unorganized territory. In *Pacey v. Timiskaming (District),* [2011] O.M.B.D. No. 775, the proposal was to construct a new seasonal cottage on Lake Kenogami, 5

kilometers from Town limits – at the edge of an established collection of buildings, including a community hall, fire station, marina, post office, restaurant, grocery store, motel, and LCBO. Some Ontarians might find that a complete community. The Board also noted that the area was used for recreational purposes "in both summer and winter".

[41] In *Pacey*, unlike *Sare*, the Board did not dwell on apprehensions about "externalizing" the cost of municipal services, because "if Kirkland Lake services are utilized, they (the users) pay for them through user fees". Inversely, however, the Board attached particular weight to the apprehension that the proposed seasonal cottage could be easily converted to conventional all-season "residential" use. The Board found that this proposal did not meet the PPS, because it was not a "resource-based recreational activity":

> 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.

[42] It is unclear how the existing built-up context for this proposal could be equated with "private accommodations in the wilderness". Nonetheless, the Board announced that since "its decisions must be consistent with the PPS", it turned down the application on that basis.

[43] *Wolverton v. MMAH* was another Board decision (issued on August 28, 2012) concerning a proposed severance to build a new seasonal lakefront cottage in unorganized territory, arguably within commuting distance of the City of Thunder Bay.

The Board agreed that the lake was a "resource", but again expressed apprehension about the recreational use being changed to a residential use:

> The resource here is the Two Island Lake but the lot being created is not solely tied to the lake as a recreational use, but it also has a residential use because of its proximity and easy access to Thunder Bay.

[44] The apparent inference in both *Pacey* and *Wolverton* was that regardless of recreational activities that may surround the property (during four seasons), its characterization would change fundamentally, if the property became a permanent primary residence. The apparent premise was that the property could not be characterized as both a recreational property and a permanent primary residence: it could be “recreational” or “residential”, but not both.

[45] In the current decision, it is fortunately unnecessary for the Board to hazard an opinion on that account. The Board merely notes that there are countless situations in Ontario where principal residences are in areas whose predominant use is for recreational properties, just as there are countless Ontarians who dream of "retiring to the cottage". Drawing the line of demarcation between a "recreational" use and a "residential" one is sometimes difficult. Similarly, the Board currently expresses no opinion on whether the *Pacey* decision would preclude all construction of new seasonal/recreational dwellings in unorganized territory, unless they were part of "hunting and fishing lodges".

[46] Moving to the next category, the Board defers until later the question of (c), property improvement that does not change the character/use of a structure from seasonal to all-season dwelling.

[47] Under category (d), there is the question of converting existing structures from seasonal cottages to all-season dwellings, including to principal residences. The *Angus* case, mentioned earlier, dealt with owners of lakefront property in unorganized territory near Highway 11, within 10 kilometers of the Town of Fort Frances. The family had first built a small "homestead" some decades ago, then a second dwelling of 170 square metres (1830 square feet). More recently, the owners built a third dwelling of 236 square metres (2540 square feet), with two-car garage. They then applied for a severance.

[48] The Board was clearly dissatisfied with that cart-before-the-horse approach: "They did not get consent prior to development – they wanted it after development". The Board compared the application to a "bail-out". Typographical errors make some passages difficult to read (second paragraph in the quotation below), but the Board's concern was clear, again including the apprehension of possible conversion to an all-season principal residence:

> The homes… could probably be used on a permanent basis if and when the properties change hands…. Zoning and building controls are absent.
>
> The use of a seasonal residence is that it can easily and readily be converted to a year around use is not in the Board's view "resource-based recreational development".
>
> The primary use of the property is that of a residence…. The Board is guided by the PPS and the lack of planning controls that exist in the area, and finds that the proposed consent is not consistent with the policies of the PPS. The consent is unplanned and uncoordinated, and would result in rewarding unregulated and unplanned development.

[49] That brings us to (e) severances where, although there is no specific project in view, the severance may assist transfer of title and/or financing of (c) property improvements, or (d) winterizing. MMAH made the following submission in opposition to that prospect:

> Uncontrolled development in unorganized territories is adverse to long-term economic prosperity by imposing externalities on adjacent municipalities…. To permit ex-post-facto legitimization of improper development patterns would result in inappropriate incentives for landowners, who would be encouraged to manufacture "facts on the ground" to evade Provincial planning requirements.

[50] Counsel for the owner countered:

- A severance would reduce the number of 99-year leases – which, it was suggested, was a worthwhile goal in itself, tacitly supported by Provincial policy.

- This proposal did not pertain to new construction, but to an existing collection of buildings at least fifty years old.

- Finally, this case is in northern Ontario. The owner's planner suggested that this kind of measure was important for maintaining local economic activity.

[51] The issue is therefore whether the above aspects play a significant role, notably as extenuating factors, in the analysis of how the planning documents (the PPS in this instance) affect this property.

[52] The Board makes a number of findings. First, as for 99-year leases, the owner's planner said that compared to the "vagueness and uncertainty" attached to the future of these cottages under these leases, the proposed severance would "help apply order to the chaos". The Board agrees that the Province did intend to phase out such long-term leases; otherwise, the Legislature would not have enacted legislation restricting them. The question was what weight to give to that factor.

[53] MMAH replied that here, the PPS brooked no exceptions: "The leases are not relevant to this". According to the PPS itself, the document was “intended to be read in its entirety and the relevant policies are to be applied to each situation”. Aside from what was on the printed page of the PPS, MMAH acknowledged no extenuating factors, not even the continued survival of this collection of buildings. The objection to "legitimizing" the "improper development patterns" suggested that the existing buildings were not now "legitimate", and hence ought to disappear.

[54] The current situation is distinguishable, however, from that of the jurisprudence cited by MMAH. None of those cases dealt with the fate of properties with existing buildings predating the relevant policies. *Sare, Pacey* and *Wolverton* all dealt with new construction; and although *Angus* dealt with existing buildings, the nub of the problem was recent construction which ran contrary to at least the spirit of pre-existing policies.

[55] Here, however, the focus was on a collection of buildings at least a half-century-old, and potentially on the prospects for their survival. Counsel for the owner challenged whether the Provincial documents could ignore the importance of accommodating longstanding existing buildings, or providing for their sustainability. He further suggested that if the PPS was indeed silent on the subject, an accommodation should be possible.

[56] For the reasons outlined on the following pages, the Board is compelled to agree that the PPS is indeed largely silent, at least on the fate of buildings such as this. The question of accommodation, however, is a different matter. Parenthetically, the Board disagrees with the suggestion that the existing buildings are not "legitimate". On the contrary, the Board agrees with counsel for the owner that in most situations, Ontario's planning framework does make accommodations for longstanding existing situations. That is the rationale, for example, for the Act's treatment of non-conforming uses. The Board finds nothing to suggest any shortcomings in the "legitimacy" of a situation that predated the PPS by decades.

[57] However, that does not answer the central question in this debate, namely whether the PPS has a policy – or at least makes allowance – for the continued existence of these buildings, let alone their improvement (or related measures for same, including severances). That is where the matter becomes more complex, because it focuses not on what the PPS says, but what it does not, and the implications thereof.

[58] If the PPS were to address existing buildings, its starting-point would be elementary. One way to make buildings disappear is to deter investment in them. Buildings need periodic attention – and infusions of money – to stay standing. That prospect becomes increasingly problematic, however, as one approaches the end of the lease, underscoring the usefulness of obtaining fee simple.

[59] However, the PPS omits any policy reference to existing buildings. Although the PPS contains multiple policies on what to build, it says essentially nothing about what is already built. In Ontario, that includes millions of buildings. Although there are policies about communities, there is no apparent Provincial policy on their physical components, namely the building stock. It is like having a policy on forests, but no policy on trees.

[60] That has been the situation since the PPS was promulgated in 1996 by a previous government. It has continued to be the case after the amendments of 1997 and 2005, and continues to be the case in the new draft PPS published in 2012, though not yet in effect.

[61] For that matter, although designated heritage properties do get mentioned, as do building conversions, the PPS is silent on what should happen to the other 99.5% of the existing building stock. For example, the only PPS reference to reusing buildings is for

conversions (from one use to another); otherwise, although it is general public policy to reuse items as small as pop bottles and shopping bags, there is no apparent public policy to reuse (or extend the economic longevity of) items as large as buildings.

[62] Similarly, although the PPS makes a reference to "ensuring that (Ontario's) resources are managed in a sustainable way", there is no reference to sustaining Ontario's largest physical collection of man-made resources, namely its building stock. The PPS's only references to sustainability are in the context of tourism, and agri-food; nothing in the PPS says that buildings themselves should be sustainable. Indeed, although the business of sustaining dwellings (i.e. their maintenance, repair, improvement and renovation) represents a monetarily larger proportion of "real estate development" than their construction, such activity is nowhere mentioned in the PPS definition of "development" – or, for that matter, in the PPS anywhere else.

[63] So the PPS is indeed silent on whether the buildings on the subject property are expected to fall into the ground, just as it is silent on that topic elsewhere across Ontario. Contrary to the apparent expectation of counsel for the owner, there is no PPS acknowledgment that the existing buildings or their sustainability are factors for consideration in terms of Provincial policy.

[64] However, before addressing the question of whether that silence opens the door to an accommodation, there is another factor. The PPS is not the last word on Provincial policy. Under s. 14 of the *Places to Grow Act,* Provincial Growth Plans can take priority. In this case, that means the GPNO.

[65] However, despite the GPNO's title of "Growth Plan for Northern Ontario", it does not say northern Ontario will grow.

[66] Furthermore, like the PPS, the GPNO omits any reference to the maintenance or improvement of existing buildings – even though, by default, that activity has represented the lion's share of recent "development" (and assessment increases) in many northern Ontario communities.

[67] In short, whether or not this collection of buildings is considered "legitimate", there is no apparent Provincial policy to prevent it from becoming a ghost town. There is no visible policy accommodation; indeed, there is no visible interest.

[68] Granted, the current planning framework bears little relation to the original planning vision for northern Ontario. The geographic townships were initially laid out with the expectation that their territory would be populated, not depopulated. That is not how matters turned out. Northern Ontario, which once represented 13% of Ontario's population, now represents half that. Kirkland Lake itself has a third of the population that it had 70 years ago. In contrast, the Province's Growth Plan for the Greater Golden Horseshoe specifies an expected population there – in Toronto and within an hour or so of city limits – of 11.5 million by 2031, absorbing over 80% of the Province's growth. That is not merely a demographic projection: it is now interwoven into Provincial policy, including consequences for the transformation of established neighbourhoods. The latter Growth Plan, for example, contains 61 references to intensification. In contrast, the Provincial documents for northern Ontario offer no apparent policy commitment to maintaining or improving the buildings that are already there now.

[69] This overview leads the Board to the following conclusions about what the PPS anticipated, and what it did not:

- The Board is compelled to agree that the PPS did not anticipate "development" at the subject property, unless "resource-based".
- Nor did the PPS anticipate improving existing dwellings there, or making it any easier for long-time residents to make their permanent home there.
- On the contrary, the policy was clear: the PPS did not want any permanent dwellings there at all.

[70] In short, although the PPS was silent about existing buildings, it was hardly silent about restricting development in unorganized territory, including severances.

[71] To some extent, the basic rationale is understandable. The Province is committed to "planning" and to the *Planning Act*. “To plan” means (*Concise Oxford Dictionary*) “to arrange beforehand”. The Province wanted development – by whatever definition – to occur where there was a physical and conceptual framework arranged for it beforehand. That is logically consistent. As observed in decisions like *Pacey* and *Angus*, the Province did not want development proceeding in a void.

[72] What is less clear is the rationale for omitting any policy reference to existing buildings, let alone any accommodation for them. It has sometimes been said that this is because improvements (and other measures) for existing buildings usually do not require *Planning Act* approvals; but that does not explain their absence from public policy. There was also no explanation of how PPS policies are supposed to address the risk of property abandonment in northern Ontario.

[73] The one certainty is that this Board is not vested with the discretion to invent policy at clear variance with stated PPS provisions. The obligation to "march in step" means that the Board sometimes finds itself forcing development where the citizenry does not want it, or preventing development where the citizenry does. However, the Board is not at liberty to disregard s. 3(5) of the Act, under which the PPS is binding.

[74] In that light, the Board returns to the initial question in this appeal – namely whether the existing planning framework would allow a severance to "put order" into this property, and hence accommodate the future of these buildings, which have existed for fifty years or more. The Board is compelled to conclude otherwise. There is nothing to suggest that the longstanding existence of these buildings, or the collection of buildings in which they were situated, would make any difference to the PPS policy framework, or to its intended outcome.

[75] Rightly or wrongly, the PPS does not make allowance for those circumstances.

ORDER

[76] The appeal is dismissed and the provisional consent is not to be given.

“M.C. Denhez”

M. C. DENHEZ
MEMBER