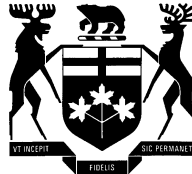


ISSUE DATE:

**February 4, 2014**



Ontario

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

PL131289

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Veronika and Timothy Bingaman  
Subject: Consent  
Property Address/Description: 2725B Highway 540  
Municipality: Northeastern Manitoulin and the Islands  
Municipal File No.: B08-13  
OMB Case No.: PL131289  
OMB File No.: PL131289

**APPEARANCES:**

**Parties**

**Counsel\*/Agent**

Manitoulin Planning Board

Elva Carter

Veronika and Timothy Bingaman

Gerrard McAndrew\* and  
Robert Barnett

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

**INTRODUCTION AND BACKGROUND**

[1] Veronika and Timothy Bingaman (the “applicants/appellants”) applied for consent to sever and convey a land locked parcel from the rear of their property on Manitoulin Island, in the Municipality of Northeastern Manitoulin and the Islands.

[2] The Manitoulin Planning Board approved a consent to sever and convey a parcel with an average frontage of 400 m on the unopened 5<sup>th</sup> Concession road allowance and an average depth of 275 m resulting in the parcel having an area of +/- 11 hectares. The consent approval was dated May 28, 2013 and was the subject of five conditions.

[3] The conditions attached to the consent are listed below:

- i) a reference plan of survey, which bears the Land Registry Office registration number and signature as evidence of its deposit

therein, illustrating the parcel(s) to which the consent approval relates;

- ii) proof, satisfactory to the Municipality, that access from the proposed severed land, being the south Part of Lot 28, Conc. V, to the maintained municipal road, known as Green Bush Road, has been constructed to a standard for travel by emergency vehicles satisfactory to the Municipality;
- iii) a copy of an approved amendment to Zoning By-law 2002-32 rezoning the proposed severed lot, identified on a Plan of Survey, from Rural Zone to Conservation Zone;
- iv) a fee of \$100.00 for each Transfer of Land submitted for Certification; and
- v) proof satisfactory to Planning Board, from the municipality, that any outstanding taxes have been paid.

[4] The applicants/appellants provided the Manitoulin Planning Board with the following resolutions from the Town of Northeastern Manitoulin and the Islands:

RESOLVED THAT the Council of the Corporation of the Town of Northeastern Manitoulin and the Islands now reads a first, second and third time and finally passes By-law 2013- 32, Veronika and Timothy Bingaman to rezone land describe as part Lot 28, Conc. V, surveyed as Part 1, Plan 31R-3943 Township of Howland from Rural zoning to Hazard zoning.

RESOLVED THAT the Council of the Corporation of the Town of Northeastern Manitoulin and the Islands is satisfied that the Greenbush Road providing access to the south east corner of Con 5, Lot 28, Geographic township of Howland is constructed to a standard for travel by emergency ATV vehicles as required by the Manitoulin Planning Board decision on application #B18-13.

[5] The Manitoulin Planning Board Minutes of October 29, 2013, contain the following narrative and resolution:

The Board were (sic)(was) reminded that this condition regarding vehicle access has been a regular condition as a policy of the Planning Board for the last 10 to 12 years. There have been many technical severances of 100 acre lots in this immediate area, which all required road allowances to be opened satisfactory for travel by regular emergency vehicles. Should the Board

consider ATV emergency vehicles acceptable they will be setting a precedent for all future applications with out travelable access.

[6] Discussion of this request resulted in the following Motion:

It was moved by K. Noland and seconded by B. Ham that Resolution No. 245-09-13 does not fulfill condition (ii) of File#B08-13. – Carried.

[7] The purpose of the severance was to transfer the subject lands to Escarpment Biosphere Conservancy for use as a walking and hiking trail.

[8] The position of the applicants/appellants, Veronika and Timothy Bingaman, is that the original condition has been fulfilled and in the alternative, it has been changed and they have appealed the change.

[9] The Manitoulin Planning Board asserts that the condition was for full size emergency vehicles and the ATV emergency vehicle access is not sufficient to satisfy the condition.

## THE LAW

[10] The Board can consider conditions attached to a consent and amended conditions attached to a consent under subsections 53(19) and 53(27) of the *Planning Act*.

### Appeal

[\(19\)](#) Any person or public body may, not later than 20 days after the giving of notice under subsection (17) is completed, appeal the decision or any condition imposed by the council or the Minister or appeal both the decision and any condition to the Municipal Board by filing with the clerk of the municipality or the Minister a notice of appeal setting out the reasons for the appeal, accompanied by the fee prescribed under the *Ontario Municipal Board Act*. 1994, c. 23, s. 32; 1996, c. 4, s. 29 (6).

### Appeal

[\(27\)](#) Any person or public body may, not later than 20 days after the giving of notice under subsection (24) is completed, appeal any of the changed conditions imposed by the council or the Minister by filing with the clerk of the municipality or the Minister a notice of appeal setting out the reasons for the appeal, accompanied by the fee prescribed under the *Ontario Municipal Board Act*. 1994, c. 23, s. 32; 1996, c. 4, s. 29 (10).

[11] Because the appeal period for the original condition has expired (20 days), the Board will comment upon the fulfillment of the original condition and the interpretation of the condition with respect to its power under subsection 53(27).

## FINDINGS

[12] The Board finds that, in the Board's view, the conditions of consent have been satisfied because the Town of Northeastern Manitoulin and the Islands has passed a resolution that says it is satisfied and the condition of the consent does not give the Manitoulin Planning Board the jurisdiction to second guess the Council of the Town of Northeastern Manitoulin's decision.

[13] Similarly, if the Town had refused to rezone the property, the Manitoulin Planning Board could not approve the consent because it transferred its power to effectively approve the consent to the Town by setting the conditions that the Town must approve. The Manitoulin Planning Board is *functus* with respect to the consent decision and cannot get another kick at the can.

[14] The Board in reading the Minutes of the Manitoulin Planning Board, comes to the conclusion that the Planning Board feels that it is not the municipality that must be satisfied with the access for emergency vehicles – if this is the case, they must then amend the wording of the condition in order to retain jurisdiction because under the current wording of the condition the Town of Northeastern Manitoulin and the Islands has the jurisdiction to determine the emergency access, not the Planning Board.

[15] The Board finds that in the alternative that the Planning Board does not finalize the consent. The Board grants the applicant/appellant's appeal of the change of condition and keeps the conditions the same and directs the Manitoulin Planning Board to finalize the consent based upon the original conditions.

[16] The Board orders that the appeal is allowed and condition (ii) to the decision of the Manitoulin Planning Board dated May 28, 2013, remains and is considered fulfilled.

"J. E. Sniezek"

J. E. SNIEZEK  
MEMBER