

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: May 20, 2014

CASE NO(S): PL131310

Appellant:	City of North Bay
Applicant:	Eric Byers
Subject:	Consent
Legislative Authority:	Subsection 53(19) of the <i>Planning Act</i> , R.S.O. 1990, c. P.13, as amended
Property Address/Description:	54 Collins Drive
Municipality:	City of North Bay
Municipal File No.:	B-13-13
OMB Case No.:	PL131310
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APPEARANCES:

Parties

Counsel

City of North Bay ("the City")

P. Leckie

Eric Byers ("the Applicant")

HEARING EVENT INFORMATION:

Hearing: Held in North Bay, Ontario on April 29, 2014

MEMORANDUM OF ORAL DECISION OF THE BOARD DELIVERED BY BLAIR S. TAYLOR ON APRIL 29, 2014 AND ORDER OF THE BOARD

INTRODUCTION

The Applicant owns the lands known municipally as 54 Collins Drive (the "Subject Lands"), which are irregular in shape with frontage onto Collins Drive, and an area of approximately 4.1 hectare ("ha"). The Subject Lands are located near the City of North Bay airport and within the 30 Noise Exposure Forecast ("NEF") found in

the Official Plan. The Applicant proposes to sever off a lot from the Subject Lands. The Applicant had filed a minor variance application and a consent to sever application with the City, both of which were approved by the Committee of Adjustment. The City appealed the severance application to the Board.

DECISION

[1] The Board considered this matter, and all the evidence and submissions of the parties and arrived at the following decision.

[2] The Subject Lands fall directly in the flight path of the North Bay Jack Garland Airport ("the Airport"). Based on the 1985NEF, the Subject Lands lie between the 30 NEF and 35 NEF contour lines.

[3] The Subject Lands front onto Collins Drive and are located among at least ten to twelve other such residential dwellings, all of which seem also to be located within the 30-35 NEF contour line.

[4] It would appear that the other residential dwellings in the immediate vicinity of the Subject Lands have been constructed on existing lots of record and appear to have been constructed in some cases 40-50 years ago, and in many instances certainly before the 1985 NEF.

[5] The Subject Lands are designated in the City's Official Plan as "General Industry" and zoned in the Zoning By-law as "MH" or Industrial Holding. It would appear that virtually all the lands west of the main Airport runway are so zoned.

[6] The Applicant has an existing lot of 4.1 ha and is proposing the consent to create a lot for the purpose of sale to his cousin who is relocating to North Bay. The consent was approved by the Committee of Adjustment and appealed by the City.

[7] What is new is that the Airport has recently completed and submitted to the City a new NEF Study.

[8] The new NEF Study was not in evidence before the Board, as it was only

recently received by the City and is under review.

[9] Section 3(5) of the *Planning Act* requires that all decisions be consistent with the Provincial Policy Statement.

[10] The 2005 Provincial Policy Statement provides in s. 1.6.7.2 specific policy directions with regard to airports:

Airports shall be protected from incompatible land uses and development by:

- b) prohibiting new residential development and other sensitive land uses in areas near airports above 30 NEF/NEP, as set out on maps (as revised from time to time) that have been reviewed by Transport Canada.

[11] All of the parties agree that the Subject Lands currently fall within the 30-35 Noise Exposure Forecast /Noise Exposure Projection (“NEF/NEP”) contour, based on the 1985 study, as found in the Official Plan.

[12] Section 1.6.7.2 also provided in subsection b), that airports are to be protected from incompatible lands uses and development by considering residential infill only if it has been demonstrated that there will be no negative impacts on the long-term function of the airport.

[13] No study has been provided by the Applicant, and the Board notes that the Official Plan designates the Subject Lands as General Industry.

[14] The Board is required by s. 51(24) of the *Planning Act* to have regard for...“the health, safety, and convenience ... of the present and future inhabitants”, in subsection a) the effect of development on matters of provincial interest, in subsection b) whether the matter is premature, and in subsection c) whether the matter conforms to the official plan.

[15] The Board has heard the evidence before it and that at the present time, the Subject Lands are in the direct flight path of the Airport, and within the 30-35 NEF/NEP contour, with no new study by the Applicant.

[16] The Board's decision in this matter must be consistent with the Provincial Policy Statement, and therefore the Board allows the appeal and denies the consent application, as the Board finds the application is not now consistent with the Provincial Policy Statement in s. 1.6.7.2 a) and b), as the Subject Lands are presently within the 30-35 NEF/NEP contour and no new study has been provided by the Applicant, and that it would be premature to do otherwise.

[17] However the Board would note that with the new Noise Study completed, there may be a transition as the City considers the new study and appropriate policy to implement the study. Thus there is more process to come.

[18] As such the Board would recommend to the City that the Applicant receive notice by pre-paid mail of any such forthcoming public meetings to consider the new study, and also requests the City to provide the Applicant with a copy of the new study.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER

Ontario Municipal Board

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