

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** May 27, 2015

**CASE NO(S):** PL150046

**PROCEEDING COMMENCED UNDER** subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Kenneth Maes
Subject:	Consent
Property Address/Description:	9584 Glendon Drive
Municipality:	Township of Middlesex Centre
Municipal File No.:	B-37/14
OMB Case No.:	PL150046
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**Heard:** April 27, 2015 in Ilderton, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

Kenneth Maes

G. Sinker

Municipality of Middlesex Centre

A. Wright

**DECISION DELIVERED BY S. JACOBS AND ORDER OF THE BOARD**

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**INTRODUCTION**

[1] Kenneth Maes owns and operates a farm with two single-detached dwellings in the Municipality of Middlesex Centre (the "Municipality"). One dwelling, where Mr. Maes resides, is at 9548 Glendon Drive and the other is referred to as 9584 Glendon Drive (collectively, the "subject property"). Mr. Maes applied to the Committee of Adjustment (the "Committee") for the Municipality for consent to sever the portion of the property

located at 9584 Glendon Drive (the “severed lands”), whereby he would retain the property with his dwelling at 9548 Glendon Drive and the surrounding farm (the “retained lands”). The Committee refused his application and he appealed to the Ontario Municipal Board (the “Board”) pursuant to s. 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended (the “Act”).

[2] The Board qualified and heard opinion evidence from two land use planners. Ted Halwa, retained by Mr. Maes, testified in support of the application, while Benjamin Puzanov, a senior planner with the Municipality, testified in support of the Municipality’s position.

[3] Mr. Maes also testified in support of his application.

[4] For the reasons that follow, the Board finds that the application for consent does not conform to the Municipality’s Official Plan (the “OP”) and that Mr. Maes’ appeal should be dismissed.

### **The Subject Property**

[5] The subject property is approximately 39.4 hectares (“ha”) in size, with frontage of 675 metres (“m”) and depth of 545 m. It is bound by Glendon Drive to the south, Amiens Road to the west, and a CN rail line to the north. Mr. Maes owns additional lands that are part of his farming operation immediately to the west of Amiens Road and also immediately to the south of Glendon Drive.

[6] Both of the dwellings on the subject property have frontage on Glendon Drive. The retained lands consist of a single detached one-storey dwelling, a pool and pool house, a shed, and a storage barn. The severed lands consist of a one-storey dwelling with an attached garage. The retained lands are proposed to be 38.99 ha in area, and the severed lands are proposed to be 4,602.2 square metres (“sq m”) in area.

[7] The subject property is zoned A1 for agricultural uses in the Municipality's zoning by-law. The Municipality's OP designates the property as Strategic Employment Area and Settlement Employment.

## **ISSUES AND ANALYSIS**

[8] In considering a consent, the Board must determine whether it is consistent with the Provincial Policy Statement, 2014 (the "PPS"), and the Board must also have regard to the criteria set out in s. 51(24) of the Act. With respect to the PPS, there is no question that the PPS permits lot creation in prime agricultural areas for a residence surplus to a farming operation as a result of farm consolidation (s. 2.3.4.1). The parties agree on this, but disagree as to whether a farm consolidation took place on the subject property and whether the subject property is considered prime agricultural lands, given that the Municipality's OP designates the property as part of a Settlement Employment area.

[9] While the Board heard a great deal of evidence from Mr. Halwa about the PPS, and from Mr. Puzanov in response, this evidence seemed to relate to two official plan amendments ("OPAs") that have been adopted by the Municipality and are not before this Board: (1) OPA 28, which led to the current land use designation of the subject property and (2) OPA 33, which permits severances of surplus dwellings in agricultural areas in the Municipality.

[10] The Board finds that the main issue therefore relates to s. 51(24)(c) of the Act, that is, whether the consent conforms to the OP.

### **County of Middlesex OP**

[11] The County of Middlesex (the "County") OP, in s. 4.5.3.3 provides that a consent to sever property in a settlement area will be considered where:

- a) the application represents infilling in a built-up area and the proposed lots are compatible with the lot area, frontage and density pattern of the surrounding area; **and**
- b) the application represents orderly and efficient use of land, and its approval would not hinder future development of the retained land. [emphasis added]

[12] Mr. Halwa and Mr. Puzanov agree that the County OP defers to the local OP to define the urban boundary of a settlement area (s. 2.3.5). The planners also agree that the subject property is part of the Komoka-Kilworth urban settlement area according to the Middlesex Centre OP.

[13] The planners also agree that this application does not represent infilling in a built-up area, as described in s. 4.5.3.3 (a), above. While the planners disagree about how s. 4.5.3.3 (b) applies to this application, the Board finds, based on the plain meaning of the provision and on Mr. Puzanov's evidence, that since the application does not meet the criterion set out in (a), it is not necessary to consider (b). The Board therefore finds that the consent application does not conform to the County OP.

### **The Municipality's OP**

[14] Mr. Halwa and Mr. Puzanov agree that the subject property is designated as both Settlement Employment and Strategic Employment Area in the Municipality's OP. Mr. Puzanov explained that this is a two-tiered designation, which recognizes that there are some employment lands in the Municipality that are more important than others due to their location. The subject property is such a case, he explained, due to its proximity to Highway 402.

[15] Mr. Puzanov advised the Board that the subject property received this designation through OPA 28, which was adopted in 2012 and was not appealed. He further advised the Board that the Municipality is in the process of updating its zoning by-law to conform to OPA 28, and that the current agricultural zoning of the subject property will change to reflect the property's Settlement Employment and Strategic Employment Area OP land use designations.

[16] Section 5.5.2 of the OP establishes the permitted uses within the Settlement Employment designation:

- (a) Industrial uses including manufacturing, processing, assembling, wholesaling, warehousing, distributing, repair and servicing and storage of goods and materials.  
...
- (b) Office park uses, including office buildings and research facilities.
- (c) Limited retail and personal service uses that are compatible with industrial uses

[17] Section 5.6 provides policy direction on the protection of employment lands within the Municipality:

Municipal Council will support the protection of designated Settlement Employment-Strategic Employment Areas in the Municipality... . Proposals to permit the conversion of lands within Settlement Employment-Strategic Employment Areas to non-employment uses may only be permitted through a Comprehensive Review, only where it has been demonstrated that the land is not required for employment purposes over the long term and, that there is a need for the conversion

[18] In Mr. Halwa's opinion, the residential dwelling on the severed lands is an existing use, and therefore the consent should not be considered a conversion of lands to non-employment uses for the purpose of s. 5.6. Mr. Puzanov disagreed; in his opinion, the creation of a residential lot on the subject property would be a conversion to a non-employment use, and therefore does not conform to the OP. He referred the Board to s. 10.8 in support of his opinion:

Existing land uses which do not conform with this Plan, and are considered incompatible with surrounding land uses, are intended to cease to exist in the long term.

[19] It is clear to the Board, with reference to s. 5.5.2 and the evidence of both planners, that the existing agricultural and residential uses on the subject property do not conform to the Settlement Employment and Strategic Employment Area designations in the OP. These existing uses are therefore, in accordance with s. 10.8, intended to cease in the long term. The Board therefore finds that the consent does not conform to the Municipality's OP.

## **CONCLUSION**

[20] Mr. Maes' case, through Mr. Halwa's evidence, focused almost exclusively on OPA 28 and OPA 33, which have been adopted by the Municipality and are not before the Board. His evidence focused on the process followed by staff leading to the adoption of OPA 33, and in particular on the misconception that OPA 33 would allow severances for surplus farm residences across the Municipality regardless of their OP land use designations. He acknowledged that by reading OPA 33 in conjunction with the OP itself, it was clear that these severances would only be permitted in agricultural areas. Mr. Halwa also agreed with Mr. Puzanov that the subject property is clearly within the Strategic Employment Area and Settlement Employment designations, and the Board finds, based on the relevant OP provisions discussed above, consents are not permitted in these areas.

[21] Regarding OPA 28, Mr. Maes testified that he was not aware of the change in land use designations on his property until he attended the Committee hearing for this consent application. He advised the Board that he had taken ill and had a lengthy recovery period, which may have accounted for him not seeing the published notice for OPA 28. While the Board is sympathetic to these circumstances, this OPA is not before the Board, and the issues and evidence raised in Mr. Maes' case would have been more appropriately directed to that process. Instead, the Board is confronted with an OP designation that does not allow the consent Mr. Maes seeks, and therefore must dismiss his appeal.

## **ORDER**

[22] The appeal is dismissed and provisional consent is not granted.

*"S. Jacobs"*

S. JACOBS  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elfto.gov.on.ca](http://www.elfto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

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