

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 19, 2015

CASE NO(S): PL150146

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Pete McClary
Subject: Application to amend Zoning By-law No. (2005-005 - Refusal of Application by Middlesex Centre/ County of Middlesex
Existing Zoning: Agricultural (A1)
Proposed Zoning: To Surplus Residence (SR) and Agricultural - No Residence (A3)
Purpose: To permit the residential use of the agricultural land
Property Address/Description: Part of Lot 8, Concession 14
Municipality: Township of Middlesex Centre
Municipality File No.: 2005-005
OMB Case No.: PL150146
OMB File No.: PL150146
OMB Case Name: McClary v. Middlesex Centre (Township)

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

Applicant and Appellant: Pete McClary
Subject: Consent
Property Address/Description: Part of Lot 8, Concession 14
Municipality: Township of Middlesex Centre
Municipal File No.: B-26/14
OMB Case No.: PL150146
OMB File No.: PL150147

Heard: August 5, 2015 in Ilderton, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
Township of Middlesex Centre	Andrew Wright* and Laura Geddes*
Pete McClary	Brian McClary

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. V. ZUIDEMA ON
AUGUST 5, 2015 AND ORDER OF THE BOARD**

[1] The two matters before the Board were: i) a Zoning By-Law Amendment (2015-013) to amend the Comprehensive Zoning By-Law 2005-005, and ii) a Consent Application (B-26/14).

[2] The purpose of the proposed Zoning By-law was to rezone a parcel of land located at 23550 Highbury Avenue North also referenced as County Road 23 ("subject property") which Mr. Pete McClary ("Appellant") owns. He wanted to sever this parcel from his farm holdings.

[3] The purpose of the consent is to sever a surplus farm residence and three accessory buildings on a lot with a lot frontage of approximately 100 metres (328 feet) and having an area of approximately 2.05 hectares (5.07 acres) from a farm holding with a lot frontage of approximately 602 metres (1,975 feet) along Fourteen Mile Road, a flankage of approximately 662 metres (2,171.9 feet) along Highbury Avenue North and a lot area of approximately 39.829 hectares (98.4 acres).

[4] The Appellant relied upon the provision contained in the Provincial Policy Statement ("PPS") which permits a severance of residence surplus to a farming operation upon the consolidation of that farm with other farming operations.

[5] While that provision is available, a restriction imposed by the 2014 PPS requires that the parcel to be severed be of a minimum size so as to reduce the removal of

agricultural land. The thrust of the policy is the protection of agricultural lands, soils and operations.

[6] The Municipality of Middlesex-Centre (“Municipality”) refused the applications on the basis that the proposed severance was simply too large. The Appellant appealed to this Board from those decisions.

[7] In a nutshell, the Appellant wants a five acre parcel; the Municipality suggested that the parcel was about 3½ acres too big and that being so, offended not only the 2014 PPS but also provisions of the Official Plan.

[8] I heard from Brian McClary, the son of the Appellant who appeared as witness and Agent. He testified as a lay-person. He was frustrated with the process believing what was being proposed was a “win-win-win” (as he termed it) for the Municipality (to collect more taxes), his father’s company and for the potential purchasers of the proposed severance.

[9] Because the parcel in question was not being farmed, Mr. McClary testified that severing the five acre parcel made sense.

[10] I provided an oral decision dismissing the appeals. I relied upon the testimony of Mr. Ben Puzanov who was qualified and accepted as an expert in land use planning. I also heard from Mr. Arnold Marsman, the Chief Building Official for the Municipality. He too was qualified and accepted as an expert in his field, namely to speak to the *Building Code Act*.

[11] I primarily relied upon the evidence I heard from Mr. Puzanov who methodically reviewed the proposed rezoning and consent. His opinions had not changed from those expressed in his planning report which report was before the Municipality when it made its decisions on these two matters. That report was in the Board’s file and contained in the Document Brief filed as Exhibit 3.

[12] The Document Brief had been provided to the Appellant by Counsel to the Municipality approximately a week before this hearing commenced. It was also sent to Mr. Richard Zelinka, a Planner who had appeared before the Municipality in support of the proposal. Mr. Zelinka, however was not retained to attend at this hearing and Mr. McClary testified that Mr. Zelinka had not been retained by him or the Appellant or the Appellant's company at any time.

[13] At the outset of the hearing, I asked Mr. McClary if he was seeking an amendment to his application as the position of the Municipality had been consistent. He did not seek an amendment and as such, the proposal before me was to sever a 5+ acre parcel.

[14] The rezoning was necessary to prohibit a new dwelling from being constructed on the parcel to be retained. The ZBA would have also recognized the reduced lot area of the parcel proposed to be retained if the consent was granted. The rezoning would change the zoning from the Agricultural (A1) zone to a Surplus Residence (SR) and Agricultural - No Residence (A3) zone.

[15] It should be noted that the Appellant, along with his wife and son, are *bona fide* farmers as they own over 2000 acres of farmland in the County and for some of their farm holdings, have received approval to sever a residence surplus to a farming operation as a result of a farm consolidation.

[16] Mr. McClary was candid to state that in the past, such requests were granted without opposition. He was at a loss as to why this one did go through.

[17] Mr. McClary testified that he did not obtain any advice, legal or planning, prior to this hearing. Unfortunately, while I sympathized with Mr. McClary, I indicated that I could not ignore the evidence from Mr. Puzanov, which I found compelling and comprehensive. I also could not ignore the specific restriction contained in the 2014 PPS and the requirement that decisions of this Board are to be consistent with the PPS.

[18] Therefore the Board ordered the appeals dismissed in their entirety and the consent sought not approved.

“J. V. Zuidema”

J. V. ZUIDEMA
VICE CHAIR

If there is an attachment referred to in this document
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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