

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: February 01, 2017

CASE NO(S): PL160832

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

Appellant:	Sleek Developments Inc.
Applicant:	Canadian National Railway Corporation
Subject:	Consent
Property Address/Description:	5800 Thorold Stone Rd
Municipality:	City of Niagara Falls
Municipal File No.:	B-2016-023
OMB Case No.:	PL160832
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Applicant:	Canadian National Railway Corporation
Subject:	Consent
Property Address/Description:	5800 Thorold Stone Rd
Municipality:	City of Niagara Falls
Municipal File No.:	B-2016-024
OMB Case No.:	PL160832
OMB File No.:	PL160834

Heard: January 18, 2017 in Niagara Falls, Ontario

APPEARANCES:

Parties

Sleek Developments Inc.

Counsel

Sara Premi

Canadian National Railway Corporation and Oleo Energy Inc. Bruce Engell

City of Niagara Falls Ken Beaman

**MEMORANDUM OF ORAL DECISION DELIVERED BY RICHARD JONES ON
JANUARY 18, 2017 AND ORDER OF THE BOARD**

[1] The Canadian National Railway Corporation and Oleo Energies Inc. (“Oleo”) made an application for consent to the City of Niagara Falls’ Committee of Adjustment (“COA”) involving lands located on the south side of Thorold Stone Road between Stanley Avenue and Portage Road.

[2] The proposed conveyances involved six parcels of vacant land which are described as follows:

Part 1 has an area of 2,083 m²; Part 2 has an area of 4,280 m², Part 3 has an area of 138 m², Part 4 has an area of 4,163 m². Part 5 has an area of 2,085 m², and Part 6 has an area of 1,510 m².

[3] The Applicants, Canadian National Railway Corporation and Oleo propose to merge Part 1 and 2 with Part 8 (Oleo) for continued industrial use. Parts 3, 4, 5 and 6 are intended to merge and form a new parcel, which will continue to be used as a rail siding for the Oleo lands known municipally as 5800 Thorold Stone Road. Part 7 with an area of 17,200 square metres, is retained and will continue to be used for railway purposes.

[4] The COA’s approval of the consents was appealed by the Appellant, Sleek Developments Inc. (“Sleek”).

[5] Sleek, which proposes to build 96 residential townhouses on their 12-acre holding, located immediately south of the proposed conveyances and described as 4536 and 4552 Portage Road, appealed the COA decision because the company was

unsure how the conveyance of industrial-related parcels would impact the development of their lands for residential purposes. The Sleek lands are currently designated and zoned for industrial use although applications to redesignate and rezone the property for residential purposes were submitted to the City of Niagara Falls in 2015.

[6] Several days prior to the hearing event, the Board was advised of a joint intention to settle the appeal, and during the hearing event itself, part of the morning's proceedings was adjourned to facilitate completion of Minutes of Settlement ("MOS"). Counsel for the City was in attendance and was supportive of the initiative.

[7] Following completion of the MOS, the Board heard evidence from David Butler, an experienced professional planning consultant who had been retained on behalf Oleo. The Board heard that the MOS concerned the provision of noise mitigation measures intended to protect the Sleek property from the intrusion of industrially-related noise from the larger Oleo holding.

[8] The planner testified that the conveyances satisfied s. 51(24) of the *Planning Act* and further advised the Board that the existing land uses were not changing on the parcels subject to severance consideration.

[9] He advised the Board that provincial policy specifically, the Provincial Policy Statement 2014 and the Growth Plan for the Greater Golden Horseshoe were supportive of transportation systems, which provided connectivity for moving people, and goods. Additionally, he opined that the Niagara Region Official Plan and the Official Plan for the City of Niagara Falls also had policies promoting and protecting rail usage throughout the Region and the City. Mr. Butler's testimony was uncontroverted.

[10] The Board found agreement with the planner's testimony and commended the parties for the settlement initiative, which had successfully resolved the matter.

ORDER

[11] The Board orders that the appeal is allowed in part and provisional consent is to be given subject to the conditions set out in the Committee of Adjustment's Notice of Decision of the City of Niagara Falls dated July 19, 2016, in the matter of the application for consent on behalf of the Canadian National Railway Corporation.

"Richard Jones"

RICHARD JONES
MEMBER

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Ontario Municipal Board

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