

Lacombe v. Wellington (County) Land Division Committee

Armand Lacombe has appealed to the Ontario Municipal Board under subsection 53(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from three decisions of the Land Division Committee of the County of Wellington which dismissed three applications numbered B-105/96, B-106/96 and B-107/97, for consent to convey part of the lands composed of Part Lot 5, Concession 1, in the Township of Erin O.M.B. File Nos. C 970159, C 970160 and C 970161, and

The County of Wellington has appealed to the Ontario Municipal Board under subsection 45(12) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from a decision of the Committee of Adjustment of the Township of Erin which granted an application by Armand Lacombe numbered A-5-97 for a variance from the provisions of By-law 22-88 respecting Part Lot 5, Concession 1, in the Township of Erin O.M.B. File No. V 970265

[1997] O.M.B.D. No. 1814

File Nos. PL970419, C 970159, C 970160, C 970161, V 970265

Ontario Municipal Board
B.W. Krushelnicki and D.R. Granger
Oral decision: December 10, 1997
Filed: February 2, 1998

COUNSEL:

R. Arblaster, for A.L. Lacombe Stables Ltd.
H. Guthrie, for County of Wellington.

MEMORANDUM OF ORAL DECISION delivered by B.W. KRUSHELNICKI and D.R. GRANGER and ORDER OF THE BOARD:--

[para1] Mr. Armand Lacombe owns and operates A.L. Lacombe Stables Ltd. on 48.8 acres of prime farmland at the intersection of County Road 50 and the Townline Road (between the Townships of Erin and Eramosa) in the Township of Erin. Existing uses on the property include stables, paddocks, a horse racing track, a house and a 6000 square foot building which accommodates a home industry area of 1000 square feet and storage area related to the agricultural operation of 5000 square feet. Mr. Lacombe also owns a vacant 1.5 acre lot which had been severed from the farm prior to his ownership.

[para2] Mr. Lacombe wishes to enlarge the 1.5 acre property to 19.1 acres and thereby reduce his 48.8 acre property to 31.2 acres. The 31.2 acre property is to continue as a viable horse training operation with ample opportunity to expand and the 19.1 acre property will retain the 6000 square foot building with the home industry use. It is Mr. Lacombe's stated intention to build a home for himself, keep some horses

and continue to operate his home industry which manufactures electronic liquor dispensers on the 19.1 acre property. No new lot will result from these applications.

[para3] This was a one day hearing with eight exhibits presented. The Board heard professional planning evidence from John L. Cox for the applicant and from Mr. Hugh J. Handy for the County of Wellington. The Board also heard from Mr. Lacombe.

[para4] With respect to the consent applications, and on the professional planning evidence heard, the Board finds that the consent applications have given adequate regard to the Provincial Policy Statements as well as Section 51(24) of the Planning Act, are in conformity with the Wellington County Official Plan, are in conformity with the Township of Erin Official Plan and comply with the Township of Erin Zoning By-law 22-88, save and except the required variance needed to permit a home industry on a lot less than twenty-five acres which this Board will address.

[para5] The Board finds that sufficient consideration was given to the Wellington County Official Plan, in particular, Section 7.4.1 General Consent Policies. The county planner, in evidence, stated that the General Land Division policies were not at issue but went on to suggest problems with Section 7.4.1(g), related to suitability of lot shape and size, and (h), related to compatibility with surrounding uses. The Board finds on the evidence of the planner for the applicant that the size and shape of the proposed lots conform with the Official Plan and that the lots are compatible with the smaller agricultural and residential parcels located in this area.

[para6] The Board also finds, on the evidence of the planner for the applicant that the proposed lot line adjustment will not result in an irregular shaped lot. Both parcels will continue to be used for agricultural purposes on lot sizes appropriate for the use.

[para7] The Board orders that the appeals of Armand Lacombe are allowed and provisional consents granted subject to the conditions set out in Exhibit 8 and attached as Schedule 'A' to this decision.

[para8] With respect to the variance application, and on the professional planning evidence heard, the Board finds that the four tests of Section 45(1) of the Planning Act have been met.

[para9] The variance recognizes an existing use with little impact on the surrounding area. No neighbours appeared in opposition. The variance is minor, desirable for the appropriate use of the land and maintains the general intent and purpose of the by-law and of the Official Plan.

[para10] The Board dismisses the appeal of the County of

Wellington and orders approval of the variance with a modification to condition two which should now read:

The Board orders the existing home industry be recognized as the primary use of the property for up to five years from the date of this Board Decision in order to allow the construction of a residence on the 19.1 acre property and insure the reversion of the home industry back to a secondary use.

[para11] The Board so orders.

B.W. KRUSHELNICKI and D.R. GRANGER, Members

SCHEDULE "A"

O.M.B. File No. C 970159 Case No. PL970419

Exhibit No. 8

- 1) THAT the Documents in triplicate with original signatures to finalize and register the transaction be presented to the Secretary-Treasurer of the Land Division Committee and have the Certificate of Official endorsed thereon within one year of the issuance of the Board's Order in this matter.
- 2) THAT the solicitor for the Owner give an undertaking in writing to provided to the Secretary-Treasurer of the Land Division Committee a copy of the deed/instrument for Consent B105/96 as registered in the Land Registry Office.
- 3) THAT, if the legal description of the parcel(s) referred to in the documents which are proposed to finalize and register the transaction of this Consent B105/96 contains a reference(s) to a deposited Reference Plan(s), the Owner's solicitor provide to the Secretary-Treasurer of the Land Division Committee a full copy of the Reference Plan(s) as deposited.
- 4) THAT the Purchaser take title of the severed lands in the same manner as he holds his abutting lands; and THAT Section 50(3) of the Ontario Planning Act, R.S.O. 1990 applies to any subsequent conveyance or any transaction involving the parcel of land that is the subject of this Consent; and THAT the solicitor for the Registered deed of the abutting lands to which this Consented Parcel would be conveyed; and THAT the solicitor for the applicant provide an undertaking in writing which shall be to the effect that, at the time of registration of the transfer to which the Certificate of Official under Section 53(42) of the Ontario Planning Act, R.S.O. 1990 is affixed, that the legal description of the resultant lot and the legal description in any mortgage (if applicable) encumbering the resultant lot will be identical.
- 5) THAT the Solicitor for the Owner give an undertaking in writing that Consent B107/96 for the consolidation of parcels

will be finalized and registered forthwith after the registration of the documents for consent B106/96 in reference to the lot line adjustment.

O.M.B. File No. C 970160 Case No. PL970419

Exhibit No. 8

- 1) THAT the Documents in triplicate with original signatures to finalize and register the transaction be presented to the Secretary-Treasurer of the Land Division Committee and have the Certificate of Official endorsed thereon within one year of the issuance of the Board's Order in this matter.
- 2) THAT the solicitor for the Owner give an undertaking in writing to provide to the Secretary-Treasurer of the Land Division Committee a copy of the deed/instrument for Consent B106/96 as registered in the Land Registry Office.
- 3) THAT the Owner, as provided for under Section 69 of the Planning Act, R.S.O. 1990 as amended, shall pay to the Treasurer of the County of Wellington the administration fee in effect at the time of the issuance of the Certificate of Official for Consent.
- 4) THAT a Reference Plan be prepared which shall indicate the boundaries of the severed parcel and any easements/right-of-way, and this Plan shall be deposited in the Land Registry Office; and a deposited copy thereof be also filed with the Secretary-Treasurer.
- 5) THAT the Purchaser take title of the severed lands in the same manner as he holds his abutting lands; and THAT Section 50(3) of the Ontario Planning Act, R.S.O. 1990 applies to any subsequent conveyance or any transaction involving the parcel of land that is the subject of this Consent; and THAT the solicitor for the applicant submit to the Secretary-Treasurer a copy of the Registered deed of the abutting lands to which this Consented Parcel would be conveyed; and THAT the solicitor for the applicant provide an undertaking in writing which shall be to the effect that, at the time of registration of the transfer to which the Certificate of Official under Section 53(42) of the Ontario Planning Act, R.S.O. 1990 is affixed, that the legal description of the resultant lot and the legal description in any mortgage (if applicable) encumbering the resultant lot will be identical.
- 6) THAT the Solicitor for the Owner give an undertaking in writing that Consent B107/96 for the consolidation of parcels will be finalized and registered forthwith after the registration of the documents for consent B106/96 in reference to the lot line.

O.M.B. File No. C 970161 Case No. PL970419

Exhibit No. 8

1) THAT the Documents in triplicate with original signatures to finalize and register the transaction be presented to the Secretary-Treasurer of the Land Division Committee and have the Certificate of Official endorsed thereon within one year of the issuance of the Board's Order in this matter.

2) THAT the solicitor for the Owner give an undertaking in writing to provide to the Secretary-Treasurer of the Land Division Committee a copy of the deed/instrument for Consent B107/96 as registered in the Land

3) THAT, if the legal description of the parcel(s) referred to in the documents which are proposed to finalize and register the transaction of this Consent B107/96 contains a reference(s) to a deposited Reference Plan(s), the Owner's solicitor provide to the Secretary-Treasurer of the Land Division Committee a full copy of the Reference Plan(s) deposited.