

Case Name:

Rowan v. Erin (Town)

**IN THE MATTER OF subsection 53(19) of
the Planning Act, R.S.O. 1990, c.**

P.13, as amended

Applicant and Appellant: Eleanor Rowan

Subject: Consent

**Property Address/Description: 5785 First Line
Municipality: Town of Erin, County of Wellington**

[2009] O.M.B.D. No. 643

OMB Case No.: PL090413, OMB File No.:

PL090413, Municipal No. B38/09

Ontario Municipal Board

Panel: J. Chee-Hing, Member

Decision: July 29, 2009.

(10 paras.)

Appearances:

Eleanor Rowan: B. Manderson, agent.

Town of Erin: R. Mullin, counsel, A. Anderson, agent (student-at-law).

County of Wellington: R. Mullin, counsel, A. Anderson, agent (student-at-law).

DECISION DELIVERED BY J. CHEE-HING
AND ORDER OF THE BOARD

CONTEXT:

1 Ms Eleanor Rowan is both the Appellant and Applicant in these proceedings. Ms Rowan owns the property located at 5785 First Line in the Town of Erin (the "Town"). The property is approximately 40.9 hectares (101 acres) and is zoned agricultural and environmental protection. Ms Rowan seeks to sever a 1.1 ha parcel with the intention of creating a new residential lot. The County's Land Division Committee (LDC) refused her severance application and the matter is now before this Board on appeal. The Town's planning staff reviewed the severance application and did not support the proposed severance.

Consent Requested:

2 To sever 1.1 hectares with 66m frontage from the subject property for the purposes of creating a new residential lot. The retained lands would be 39.8 hectares.

BOARD'S FINDINGS AND DISPOSITION:

3 At the hearing, the applicant was represented by a layperson, Mr. B. Manderson. The Applicant summonsed as a witness, Mr. B. Maieron who is a member of the County's LDC. The Town was represented by Counsel and the staff planner (Ms L. Redmond).

4 Having heard all of the evidence and submissions, the Board dismisses the appeal of Ms Rowan and will not grant provisional consent. The Board finds the planning evidence of Ms Redmond to be uncontroverted and unchallenged. On the other hand, Mr. Manderson brought no planning evidence to support the severance application and was clearly out of his depth in attempting to articulate his client's position. Mr. Manderson acknowledged that he took no issue with the planning evidence given by the Town's planner and attributed his lack of preparedness from being brought in to represent the Applicant very late in the appeal process. He asked the Board to grant the consent on compassionate grounds.

5 The Board's reasons are as follows. The Town's planner testified that the Official Plan (OP) designates the property as prime agricultural area and core greenland. The proposed severance is within the lands designated as prime agricultural area. Section 2.3.4.3 of the Provincial Policy Statement (PPS) clearly prohibits the creation of new residential lots in prime agricultural areas unless it involves a residence surplus to a farming operation resulting from a farm consolidation. It was her evidence that the proposed severance is not a residence surplus to a farming operation. The County and Town's Official Plans both contain severance policies that are consistent with that of the PPS. The proposed creation of a new residential lot within the subject lands does not conform to these policies. The proposed lot creation would lead to fragmentation of viable farmland within a prime agricultural area. The Town's planning staff have consistently recommended against the creation of new residential lots in prime agricultural lands, which are not in conformity with the PPS and the OP lot creation policies. It was her planning opinion that the proposed severance does not meet the criteria found in subsection 51(24) of the *Planning Act* and is not consistent with the

PPS.

6 Ms Rowan testified that the purpose of the severance would be to obtain some financial security for her, as she is a widow. She rents out a portion of her lands for growing crops but this does not generate sufficient income for her. It is her hope that if the severance is granted that she could sell the severed lot to ensure her financial security. Mr. Maieron, who appeared under summons, is a member of the County's LDC. It is his testimony that the LDC has been inconsistent in its decisions when considering severance applications for residential lots in agricultural areas. He testified that he supported the applicant's severance application when it was before the LDC.

7 The Board finds that the intent of the PPS policies with respect to prohibiting the creation of new residential lots in prime agricultural areas is to prevent further fragmentation of Ontario's prime agricultural lands. The agricultural severance policies of the County and the Town's OP also address new residential lot creation in prime agricultural areas and the conditions upon which they will be allowed. The Applicant's proposal does not meet these criteria nor does it appropriately address the criteria found in subsection 51(24) of the *Planning Act*.

8 The Board finds the evidence of the Town's planner to be uncontroverted and unchallenged. Her evidence was the only planning evidence given at the hearing and the Board accepts her evidence. While the Board may be sympathetic to the reasons given by the applicant in seeking the severance, financial security is not planning evidence. The Board is required to decide on the planning merits of an appeal before it.

9 Therefore, the **BOARD ORDERS** that the appeal is dismissed and provisional consent is not given.

10 So Orders the Board.

J.CHEE-HING
MEMBER

qp/e/qlas