Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement local

ISSUE DATE: October 08, 2020 **CASE NO(S).:** PL190487

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	John Apreda & Shelley Insco
Appellant:	County of Dufferin
Applicant:	Kevin McNeilly
Subject:	Consent
Property Address/Description:	293274 8th Line
Municipality:	Township of Amaranth
Municipal File No.:	B1-19
LPAT Case No.:	PL190487
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LPAT Case Name:	Apreda/Insco & Dufferin (County) v. Amaranth (Township)

Heard: September 25, 2020 by video hearing

APPEARANCES:

Parties	**Counsel**
John Apreda and Shelley Insco ("Appellants")	Robert Scriven
Dufferin County ("County")	Rebecca Hines
Kevin McNeilly ("Applicant")	Self-represented
Township of Amaranth ("Township")	Not appearing

DECISION DELIVERED BY MARGOT BALLAGH AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The Applicant, Kevin McNeilly, applied for a Consent to sever the property known municipally as 293274 8th line and legally described as Concession 8, East Part Lot 5 (the "subject land") to create a new residential lot. David Corriveau and Roberta Corriveau are the owners of the subject land, which is located within the Township, which is a lower tier municipality within the County.

[2] Although the planning Report to Council recommended against approval, the Council of the Township approved the Applicant's application for Consent subject to conditions. The County and neighbouring land owners, John Apreda and Shelley Insco (the "Appellants"), appealed the decision pursuant to s. 53(19) of the *Planning Act* ("Act") to the Local Planning Appeal Tribunal (the "Tribunal").

[3] The Applicant wishes to sever 3.33 hectares ("ha") from the subject lands, leaving a retained lot with an area of 15.6 ha. The purpose of the application as stated on the application form is "Residential Home/ Hobby Farm" with a proposed use stated as "Residential/Ag." The Applicant told the Tribunal that he hoped to purchase the severed portion from the Owners and build a residence and barn to raise and train horses.

[4] The subject land is designated Agricultural/ Environmental Protection in the local Official Plan and zoned Agricultural/ Environmental Protection. The Applicant has not applied for Official Plan or Zoning By-law amendments to change the land use designation or zoning of the subject land.

THE HEARING

[5] The following witnesses were called:

- a Registered Professional Planner, Gregory Bender, was qualified without objection to provide opinion evidence on land use planning and testified in support of the County in opposition to the proposed Consent to Sever;

- the Appellant, John Apreda, who is a neighbour of the subject lands, testified in opposition to the proposed Consent to Sever; and

- the Applicant, Kevin McNeilly, testified in support of the proposed Consent to Sever.

[6] Exhibits, all of which were filed by Counsel for the County at the start of the hearing, were marked as follows:

- Exhibit 1 – Joint Document Book

- Exhibit 2 – Addendum Document Book

- Exhibit 3 – CV for Gregory Bender

- Exhibit 4 – Acknowledgment of Expert's Duty for Gregory Bender

- Exhibit 5 – Revised Outline of Evidence for Gregory Bender

- Exhibit 6 – Updated lot location maps (11 pages)

- Exhibit 7 – Joint Book of Authorities

ISSUES AND ANALYSIS

[7] An appeal to the Tribunal of a decision on a Consent application for authorization to sever a property, is a *de novo* hearing and the onus remains on the Applicant to satisfy the Tribunal that the Consent is consistent with the in-effect Provincial Policy

Statement (“PPS 2020”) and conforms with the applicable provincial plan, in this case, A Place to Grow: Growth Plan of the Greater Golden Horseshoe (2019) (the “Growth Plan”) pursuant to s. 3(5) of the Act. The Tribunal must also have regard to the list of enumerated criteria set out in s. 51(24) of the Act in making its decision, including the effect of the proposal on matters of Provincial interest; that it conforms to the lower and upper-tier Official Plans (“OP”) as required by s. 51(24)(c); and whether the subject lands are suitable for the purpose of the Consent as required by s. 51(24)(d).

[8] Mr. Bender testified that the subject land is located in the Township to the south of 5 Sideroad and to the west of 8th Line generally bounded by the woodlots to the south and farmland and woodlots to the west. The neighbouring lands are generally rural in character with agricultural uses being the predominant land use. He told the Tribunal that lot areas within the study area, representing parcels within 2.5 kilometres of the subject land, ranged from 80.86 ha to 0.40 ha with a median lot size of approximately 20 ha. The median lot size for agricultural lots in the study area is approximately 40 ha.

[9] Mr. Bender told the Tribunal that the subject land is classified as Class 1 soils, which are the most viable, and that the entirety of the subject lands is considered to be within a prime agricultural area. Although Mr. McNeilly took the position in his application that the soils were Class 3 or poorer, he did not have the soil tested to discredit the CLI 1 rating of the subject land. Based on the uncontroverted expert evidence provided by Mr. Bender, and Mr. McNeilly’s acknowledgment at the hearing that he was not opposing the expert evidence, the Tribunal finds that the soil is classified as Class 1.

[10] The area of the proposed severed lot is identified as “Agricultural Area”. The south end of the retained lot is wooded area and pond identified as “Woodlands”. The Township’s OP designates, and the Township’s Zoning By-law zones, the majority of the subject land as “Agricultural” with the wooded area and pond designated “Environmental Protection”.

Relevant Policies in the PPS

[11] The application under appeal was submitted and approved within the context of the PPS 2014, requiring the decision of Council to be consistent with that version of the PPS. However, the PPS 2020 came into effect on May 1, 2020 such that the Tribunal's decision is required to be consistent with the policies of the PPS 2020. Mr. Bender confirmed that there were no substantive changes made to the PPS 2020 that relate to this matter.

[12] The PPS 2020 defines "Prime Agricultural Area" as:

> **Prime agricultural area:** means areas where prime agricultural lands predominate. This includes areas of prime agricultural lands and associated Canada Land Inventory Class 4 through 7 lands, and additional areas where there is a local concentration of farms which exhibit characteristics of ongoing agriculture. Prime agricultural areas may be identified by the Ontario Ministry of Agriculture and Food using guidelines developed by the Province as amended from time to time. A prime agricultural area may also be identified through an alternative agricultural land evaluation system approved by the Province.

[13] Prime agricultural land is also defined:

> Prime agricultural land: means specialty crop areas and /or Canada Land Inventory Class 1,2, and 3 lands, as amended from time to time, in this order of priority for protection.

[14] Mr. Bender testified that the Provincial mapping indicates the subject lands are considered "Prime Agricultural Lands" with Canada Land Inventory Class 1 soils, such that the policies of s. 2.3 of the PPS 2020 regarding Agriculture, and specifically Prime Agricultural Areas and Prime Agricultural Lands apply.

[15] Section 2.3.1 of the PPS states:

> Prime agricultural areas shall be protected for long-term use for agriculture. Prime agricultural areas are areas where prime agricultural lands predominate. Specialty crop areas shall be given the highest priority for protection, followed by Canada Land Inventory Class 1,2 and

> 3 lands, and any associated Class 4 through 7 lands within the prime agricultural areas, in this order of priority.

[16] Section 2.3.3.1 of the PPS provides: In prime agricultural areas, permitted uses and activities are: agricultural uses, agriculture-related uses and on-farm diversified uses.

[17] Section 2.3.3.2 of the PPS 2020 states: “In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards.”

[18] Section 2.3.4.1 of the PPS 2020 directs that lot creation in Prime Agricultural Areas is discouraged and is only permitted for:

> a) Agricultural uses, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operation;
>
> b) Agriculture-related uses, provided that any new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services;
>
> c) a residence surplus to a farming operation as a result of farm consolidation, provided that….
>
> d) Infrastructure, where the facility or corridor cannot be accommodated through the use of easements or rights-of- way.

[19] Mr. Bender gave his expert opinion that the proposed lot severance for the agricultural use was not consistent with Section 2.3.4.1(a) of the PPS 2014 or the PPS 2020. He noted that the proposed use of the severed property is stated as a “hobby farm” which may be considered an Agricultural Use and supported as a permitted use under Section 2.3.3.2 of the PPS 2020; however, section 2.3.4.1(a) of the PPS 2020 requires that new lots created for agricultural use be of a size appropriate for the type of agricultural use(s) common in the area and be sufficiently large to maintain flexibility for future changes in the type or size of agricultural operation. In his opinion as a land use

planning expert, the size of the proposed lot, at 3.33 ha is not a common size for the types of agricultural uses common in the area.

[20] Mr. Bender gave his position that Section 2.3.4.1(b) did not apply to the proposed severance. He noted that “Agricultural-related uses” are defined in the PPS 2020 as “those farm-related commercial and farm-related industrial uses that are directly related to farm operations in the area, support agriculture, benefit from being in close proximity to farm operations, and provide direct products and/or services to farm operations as a primary activity.” A “hobby farm” as proposed in this case, in Mr. Bender’s view, would be considered an Agricultural use rather than an Agricultural-related use, but, as he indicated, was not of a size appropriate for the type of agricultural uses common in the area.

[21] Section 2.3.4.1 9(c) and (d) are related to lot creation for a residence surplus to a farming operation and infrastructure but the proposed severance is not intended to facilitate a lot creation for these purposes and therefore the policies do not apply.

[22] Mr. Bender concluded that it is his opinion that the proposed severance is not consistent with Section 2.3.4.1 of the PPS 2014 and is not consistent with the PPS 2020.

[23] Based on the uncontroverted evidence of Mr. Bender, the Tribunal finds that the subject lands are in a Prime Agricultural Area as identified in the PPS 2020; that the proposed lot size for the severed parcel would not be an appropriate size for the type of agricultural uses common in the area; that the lot severance, as it will accommodate a hobby farm, is of a type that is discouraged by the PPS in Prime Agricultural Areas, and that the proposed Consent is inconsistent with Policy 2.3.4.1. Accordingly, the Tribunal finds that the proposed Consent is not consistent with the PPS 2020, as required.

Growth Plan and County OP

[24] The proposed Consent must also conform to the Growth Plan.

[25] Section 4.2.6 (8) of the Growth Plan provides:

> "Outside of the Greenbelt Area, provincial mapping of the agricultural land base does not apply until it has been implemented in the applicable upper- or single-tier official plans. Until that time, prime agricultural area identified in upper -and single-tier official plans that were approved and in effect as of July 1, 2017 will be considered the agricultural land base for the purposes of this Plan."

[26] Mr. Bender testified that the subject lands are located outside the Greenbelt Area. The applicable upper-tier official plan in this case is the county OP. The County OP has been in effect since before July 1, 2017. For the purposes of interpreting the policies of the Growth Plan, the prime agricultural areas identified in the County OP are considered the agricultural land base. As discussed below, the County OP identifies the subject land as being within Prime Agricultural Areas, meaning that for the purposes of interpreting the Growth Plan, the subject land is considered to be within the prime agricultural area.

[27] Mr. Bender gave his opinion that the County OP mapping of agricultural areas has the same weight as, and is consistent with, the provincial mapping of the agricultural land base in the current policy context.

[28] The County OP was adopted on September 11, 2014 and approved by the Ministry of Municipal Affairs and Housing on March 27, 2015. It was approved as being consistent with the PPS 2014 and in conformity with the Growth Plan for the Greater Golden Horseshoe (2006), the Greenbelt Plan (2005), the Oak Ridges Moraine Conservation Plan (2001) and the Niagara Escarpment Plan (2005).

[29] The County OP designates the subject land as "Countryside Area" and such designated lands are subject to the policies of Section 4.0 of the County OP.

[30] The first paragraph of Section 4.0 of the County OP provides that the Countryside Area "encompasses lands outside of the urban settlement areas and community settlement areas and consists of the rural landscape and character of the County, which includes prime agricultural areas, rural lands, including recreational and rural recreational uses, natural heritage features and systems, and important natural resource areas, including mineral aggregate operations."

[31] Section 4.0 of the County OP also states that the Countryside Area is made up of: "Agricultural Areas – subject to the policies of Section 4.2; and Rural Lands – subject to the policies of Section 4.3."

[32] Section 4.1 (b) of the OP includes the following objectives of the Countryside Area policies as "Protect Agricultural Areas and recognize the importance of agriculture in the County and ensure its continued viability by promoting a range of agricultural uses, activities and complementary uses."

[33] Schedule "C" Agricultural Area and Rural Lands of the County OP identifies portions of the subject lands as "Agricultural Area", including the entirety of the area proposed to be severed, which in turn means that it is subject to Section 4.2 of the County OP.

[34] Section 4.2 of the County OP reads:

> "Lands within the Agricultural Area designation consists primarily of prime agricultural lands and are designated on Schedule C. Prime agricultural areas will be designated in local municipal official plans in accordance with Provincial guidelines. This Plan requires that these lands will be protected for agricultural uses unless appropriate justification is provided for alternative uses.
>
> Lands designated as Agricultural Area are intended to preserve and strengthen the continued viability of the agricultural community. Agricultural Areas are to be protected from incompatible uses, while accommodating a diverse range of agricultural uses, agriculture-related uses and on-farm diversified uses."

[35] As discussed in [26] above, the Growth Plan incorporates the prime agricultural areas identified in the County OP, and the County OP identifies the subject land as “Agricultural Area”.

[36] The County OP defines “Prime Agricultural Lands” as “specialty crop areas and/or Canada Land Inventory Class 1, 2 and 3 lands, as amended from time to time, in this order of priority for protection.” This is consistent with the PPS 2020 definition.

[37] Section 4.2.1 of the County OP provides the objectives of the “Agricultural Area” policies, including: (b) maintain and enhance the agricultural resource base and farming operations within the County”; and (c) “Protect the County’s prime agricultural area from fragmentation, development and land uses unrelated to agriculture.”

[38] Section 4.2.2 of the County OP lists the range of permitted uses within the “Agricultural Area” designation, including:

a) All types, sizes and intensities of agricultural uses and normal farm practices will be promoted and protected in accordance with provincial standards.

b) The primary use of land is for agricultural uses including:

i. the growing of crops, including nursery, biomass and horticultural crops;

ii. raising of livestock;

iii. raising of other animals for food, fur or fibre, including poultry and fish;

iv. aquaculture;

v. apiaries;

vi. agro-forestry;

vii. maple syrup production; and

viii. Associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storage, value retaining facilities , and accommodation for full-time farm labour when the size and nature of the operation requires additional employment.

[39] Section 4.2.2 (c) of the County OP provides:

> "One single residential dwelling is permitted per lot, subject to the policies of the local municipal official plan and zoning by-law. A secondary farm residence may be permitted when the size and nature of the operation requires additional employment, and provided the secondary farm residence is on the same lot, is accessory to the main farm operation, is used for full time farm help, and servicing is adequate. A consent for land division for such a dwelling will not be permitted."

[40] Section 4.2.3 of the County OP provides land use policies for land designated "Agricultural Areas". Section 4.2.3 (a) provides: "The County and local municipalities will designate prime agricultural areas in their official plans, through procedures established by the Province. Prime agricultural areas are designated on Schedule C of this Plan. Any changes to the designation of prime agricultural areas will require an amendment to this Plan, and an amendment to the local municipal official plan."

[41] Section 4.2.5 of the County OP deals with Agricultural Area Lot Creation and Adjustment and Mr. Bender emphasized where it states: "the County encourages local municipalities to establish minimum agricultural lot sizes within their official plans which seek to minimize the fragmentation of agricultural areas while accommodating a broad range of agricultural and farming operations."

[42] Section 4.2.5 of the County OP provides policies with respect to lot creation in the Agricultural Areas, including:

(a) “Lot creation in the Agricultural Area will generally be discouraged and only permitted in accordance with provincial policy and the policies of the local municipal official plan. The minimum lot area of both the retained and severed lots will be established in the local municipal official plans in accordance with the lot creation policies for the uses set out below.”

(b) “For agricultural uses, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large enough to maintain flexibility for future changes in the type or size of agricultural operations. For prime agricultural areas within the Greenbelt Plan Protected Countryside, the minimum lot size will be 40 hectares (100 acres).”

(g) “the creation of new residential lots in the prime agricultural area shall not be permitted except in accordance with policy 4.2.5 (c)” relating to severance for a residence rendered surplus to a farming operation.

[43] Mr. Bender provided his opinion that the proposed severance does not conform with Section 4.2.6 of the Growth Plan and Section 4.2.5 (a) of the County OP as it does not meet the requirements of provincial policies. The size of the proposed lot is not in accordance with the lot creation policies for agricultural uses as set out in Section 4.2.5 (b) of the County OP.

[44] Mr. Bender further opined that the proposed severance does not conform to Section 4.2.5 (b) of the County OP because it requires new agricultural lots to be a size appropriate for the type of agriculture uses common in the area. As already noted, the proposed lot size would not be appropriate for the type of agriculture uses common in the area.

[45] It was also Mr. Bender’s opinion that the proposed severance does not conform with Section 4.2.5 (g) of the County OP because the proposed use as stated in the application form is “Residential /Ag” and the policy only permits residential lot creation to

accommodate a residence made surplus through farm consolidation, which is not the situation in this case.

[46] The Tribunal accepts Mr. Bender's uncontested evidence and opinions and finds that the proposed Consent to Sever does not conform with section 4.2.6 of the Growth Plan or sections 4.2.5(a), 4.3.5 (b) and 4.2.5 (g) of the County OP.

The Township OP

[47] Mr. Bender testified that the Township OP was approved with modifications on June 13, 2012 and that the portions of the Township OP that are currently in effect pre-date the PPS 2020, the Growth Plan and the County OP.

[48] The Township OP designates the subject land as "Agricultural" with a portion in the south designated "Environmental Protection".

[49] Section 3.1.4 (a) of the Township OP provides:

> "It is the policy of this Plan that the agricultural land base is to be preserved as much as possible in large parcels. The severed and retained parcels are to be of an appropriate size for the type of agricultural uses common in the area and sufficiently large to maintain flexibility for future changes in the type or size of the agricultural operation. In general, severances are discouraged. The basic farm unit in this category will be the original surveyed parcel of land, of approximately 40 hectares (98.9 acres), the farm residence, barns and other buildings and structures which together support the farm operation."

[50] Mr. Bender provided the Tribunal with his expert opinion that the report to the Township Council dated September 11, 2019, is correct in stating "The proposed severance does not conform with these policies as the severed and retained parcels are not of an appropriate size to provide for the long-term flexibility and viability of the existing undersized farm parcel."

[51] It should be noted that Mr. McNeilly raised the issue in his cross-examination of Mr. Bender that Section 3.1.5 h) of the Township OP permitted hobby farms on lots having an area of at least 2.0 ha. Mr. Bender agreed that the proposed severance of 3.33 ha would conform with that particular Township OP policy but he pointed out that the Township OP predated the PPS 2020, the Growth Plan and the County OP, and that, in his opinion, policy 3.1.5 h) of the Township OP was not consistent with the PPS 2020 or conform with the Growth Plan or the County OP, as required.

[52] In response to Mr. McNeilly, Mr. Bender also agreed that raising horses is a permitted use on agricultural land. However, Mr. Bender explained that his focus was on the fact that the proposed size of the severed lot was not the predominant size of agricultural lots in the larger area.

[53] The Tribunal accepts Mr. Bender's uncontested evidence and opinions and finds that policy 3.1.5 h) of the Township OP is not consistent with the PPS 2020 and does not conform with the Growth Plan or the County OP.

Summary of Mr. Bender's Planning Evidence

[54] In conclusion, Mr. Bender summarized his opinion that the proposed Consent to sever should not be approved because it is not consistent with Section 2.3.4.2 of the PPS 2020 and does not conform with Section 4.2.6 of the Growth Plan, Sections 4.2.5 (a), (b) and (g) of the County OP and Section 3.1.4 (a) of the Township OP.

[55] Upon all the Tribunal's findings herein, and as set out in the Tribunal's conclusion below, the Tribunal accepts the whole of Mr. Bender's uncontroverted planning evidence on the planning issues in this Appeal.

Other Evidence of the Appellant

[56] Mr. Scriven submitted to the Tribunal that his clients echoed the position of the County that the Applicant's proposed Consent to sever should not be approved.

[57] Mr. Scriven called the Appellant, John Apreda, to testify in support of the appeal against the Township's decision to approve the Consent. Mr. Apreda told the Tribunal that he has lived for ten years at the neighbouring property known municipally as 293248 8th Line. He testified that his property represents 2.87 ha, which lands were severed from the subject land previously. Mr. Apreda said he appealed the Township's decision because he noticed errors or omissions in the Applicant's application for the Consent. Mr. Apreda testified that the whole area is predominantly prime agricultural land yielding productive crops and cash crops, with some wetlands. He said the subject land grew hay to harvest for feed and forage. Mr. Apreda said that he was not aware of any hobby farms in the area.

The Applicant's Evidence

[58] Mr. McNeilly testified in support of his application for the Consent to sever the subject land. He told the Tribunal that he currently lives on 12.2 acres of land north of the subject property but had brought the application to sever the subject land with the owners' consent in the hopes he could purchase the severed portion for a residence and hobby farm to raise and train horses.

[59] In cross-examination, Mr. McNeilly said that he had been the Fire Chief for the area since 2012. He said he didn't sign portions of the application (7.3, 7.4 and 7.5) because the staff at the Township told him it was unnecessary. Mr. McNeilly told the Tribunal that he understood the application would be difficult but possible and that he thought it complied with the Township OP. He said the Conservation authority had no issues with his proposal. He said there was a decline in the number of residences in the area and he believed one additional residence would not overburden the area. Mr.

McNeilly testified that, originally, he intended the lot to be for personal use but later considered he could sell a horse occasionally.

[60] Mr. McNeilly told the Tribunal that the subject land was already smaller than a farm should be and was already fragmented with wetlands and woodlands.

[61] Mr. McNeilly said he has not attempted to satisfy the conditions attached to the Township's approval such as applying for an OP and Zoning By-law amendments, due to this appeal.

[62] The Tribunal finds that the evidence provided by Mr. Apreda supported the expert conclusions of Mr. Bender, whereas the evidence provided by Mr. McNeilly did not refute those conclusions.

CONCLUSION

[63] Upon the findings made, having regard for the criteria set out in s. 51(24) of the Act, and based on the whole of the evidence, inclusive of the uncontroverted oral testimony of the only expert, Mr. Bender, and the documentary record and the submissions of the parties, the Tribunal accepts the opinion evidence of Mr. Bender and, the Tribunal finds that the application for Consent is not consistent with the PPS 2020 and does not conform with the Growth Plan, the County OP and Section 3.1.4 (a) of the Township OP. As such, the proposed Consent does not represent good planning in the public interest. For these reasons, the Tribunal will allow the appeal and provisional consent is not given.

ORDER

[64] The Tribunal order that the appeal is allowed and provisional consent is not given.

“Margot Ballagh”

MARGOT BALLAGH
MEMBER