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MEMORANDUM	DATE:	July 14, 2008
	TO:	Mayor & Members of Council
	FROM:	Rob Armstrong Manager of Development Services
	SUBJECT:	Ontario Municipal Board Decision Lot 4, Plan 880, 104 Margaret Drive Consent No. B25-2007 - Elka Seccombe

Attached is the Ontario Municipal Board's Decision regarding an Appeal on Consent No. B25-2007 on the above noted property.

We are very pleased with the outcome and the hard work put forth from Shawn Postma and John Metras.

encl.

ISSUE DATE:

June 23, 2008



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

ccPlanning

PL080389

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Elka Seccombe
Subject: Consent
Property Address/Description: 104 Margaret Drive
Municipality: Town of the Blue Mountains
Municipal File No. B25-2007
OMB Case No. PL080389
OMB File No. PL080389

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TOWN OF THE BLUE MOUNTAINS

APPEARANCES:

Parties

Elka Seccombe

Town of the Blue Mountains

Counsel

Donald Greenfield

John G. Metras

DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD

The Applicant proposes to sever an existing residential lot containing a single detached dwelling into two equal residential parcels, each measuring 2,053 square metres. The subject property is a registered lot (Lot 4 of Registered Plan 880) within the Hawthorn Estates Subdivision in the Town of the Blue Mountains. The subject lands are fully serviced with frontage on Arrowhead Road and Margaret Drive, both being opened and maintained public streets. Both the severed and retained lots will have access from Margaret Drive, the internal road (and a cul de sac). The surrounding land uses include predominantly single-detach residential dwellings to the north, south and west with additional residential lands proposed to the east of the subject lands.

Planning Consultant David Slade was qualified to give his expert land use planning evidence. He described the subdivision (referred to in this Order as the Hawthorn Estate (HE) Subdivision) as one comprised of 17 lots. A portion of this older subdivision was created in 1966 (nine lots) and the remaining 8 lots were added in

1974. Lots were originally serviced by private septic systems and private wells and are larger in comparison to lots created today on full municipal servicing. Full servicing of this subdivision was completed in 2002. Mr. Slade opined that this plan of subdivision "appears to be outdated with current development standards".

Homes along Margaret Drive are mostly older and sit on large, single-family residential lots. The lot depths are large and thus provide more opportunity to set the dwellings farther back on the lots. Some homes are visible from the road while others are obscured partially or totally by trees and vegetation on Margaret Drive. From Margaret Drive, the Applicant's home is barely visible through a mix of coniferous and deciduous trees and the rear yard is not visible. The proposed portion to be severed is also heavily treed on both the northern and western boundaries. The lot immediately to the south of the subject property is vacant and also heavily treed. Lot frontages in the HE Subdivision vary from 30 to 60 metres and there are a couple of corner lots. Lot areas vary from 3,400 square metres to 5,400 square metres. Lots north of the proposed severance have lot frontages between 30 and 40 metres in width. The surrounding land fabric consists generally of single-family residential lots.

Part of Mr. Slade's planning methodology was to study the area beyond the HE Subdivision as opposed to the other two planners who confined their reviews and analyses to the HE Subdivision. Mr. Slade advised the Board that this broader study area assisted him in the formation of his planning opinion. There are several subdivisions in proximity to the HE Subdivision but these are separated from it by physical topography to the north, west and south and by Arrowhead Road to the east: the western Alta Subdivision is separated by a ravine and bluff; the Wilson Subdivision to the south is separated from the HE Subdivision by an open space trail and a proposed development is proposed to be built on the other side of Arrowhead Road. North of the HE Subdivision is Craigeith Provincial Park.

Mr. Slade supports the proposed consent. He provided the Board with a comprehensive review of the relevant planning documents, including the 2005 Provincial Policy Statement; the County of Grey Official Plan, the Town the Blue Mountains Official Plan; and the applicable Township of Collingwood Zoning By-law. It was his opinion that not only does the proposed severance application meet all of the relevant policies of these instruments, but the proposed severance also meets the relevant criteria as set out in Section 51(24) of the *Planning Act*. A complete list of

policies referred to and interpretations given is contained in Mr. Slade's planning report at Exhibit 1, beginning at page 5 through page 22. The Board gave full consideration to the contents of Mr. Slade's report, his evidence and his professional planning opinion.

The subject lands are designated Escarpment Recreation Area (a designated area targeted for growth) in the County of Grey Official Plan. Mr. Slade provided copies of written correspondence from officials of Grey County and the Grey Sauble Conservation Authority who confirmed that these bodies had no concerns with the proposed severance application in respect of their respective policies.

The subject lands are designated Residential Infilling (R1) in the Town of Blue Mountains Official Plan. Mr. Slade held the view that the planning of this subdivision is over 42 years old and newer planning policies and approaches are in effect today. As such, the proposed severance should be considered in the context of modern planning approaches.

This planner noted that the proposed severance could occur without the need for variances to the Zoning By-law. The rear yard setback of 9 metres can be met and the Applicant has gone further by proposing a 17.5-metre setback to ensure the setback reflects what is occurring within the subdivision. The subject lands back onto a vacant lot to the south; the lands are substantially treed; and the proposed severance does not impact that lot. The side yard and frontage setbacks are most important in his opinion and he opined that the severance achieves the infilling policies of the Official Plan. Mr. Slade told the Board that the Applicant's land is one of the few lots in the area that can achieve the frontage while meeting the zoning standard.

Section 4.12.3(2) of the Official Plan is an important residential infilling policy. Mr. Slade says the municipality has been cautious in this regard. Of this policy, he and the other two planners agreed that only the first sentence applies: "Within registered plans of subdivision, further lot creation shall generally be prohibited in order to maintain the intended density and character of the development." Mr. Slade opined that as long as the severance maintains the density and character, the application could be supported. He interpreted development of the surrounding area beyond this subdivision to form his opinion that infilling is occurring. This severance will maintain the surrounding character as the proposed new lots are larger than others beyond the HE Subdivision and larger than two other subdivisions he pointed to on the various map

exhibits that are likely to be approved. In all aspects, except for the lot area and depth (since the depth is not as deep in the existing subdivision), the character of the area is the streetscape. The proposed severance will meet all setbacks of the existing zoning standards and allow similar homes to be built of a size and design that is similar to what already exists in the subdivision. The proposed severed lot will allow for a 3,000-square-foot home (6,000 square feet if a second floor is built) and totally in character with what exists. He added that not only does the severed lot meet the zoning standard of 9 metres, but the Applicant is willing to have a condition imposed of a setback of nearly 18 metres.

In accordance with Policy 9.3(12) of this Official Plan, Mr. Slade opined that the character of the HE Subdivision is open space and will remain the same. Further, the addition of one lot will not adversely affect the character of the area. Mr. Slade noted that the Official Plan provides no direction on density, but while the HE Subdivision did not develop as intensively forty years ago, today's surrounding and nearby development is occurring at a density level of 5 units per hectare as allowed for in the Escarpment Recreation Area in the Town's Official Plan.

Subsection (13) of this policy requires an examination of how the proposed infilling will affect other lots in the subdivision. Mr. Slade noted that two vacant lots in the HE Subdivision do not provide opportunities to create new lots without a change to the zoning for frontage. He added that the corner lots could meet the 30-metre frontage standard but the homes on these lots are located in the middle of the lots. Accordingly, Mr. Slade opined that there is very little potential for division in this subdivision if the zoning standards are to be met and thus, the proposed severance would not create a precedent for this subdivision.

The subject lands are zoned Estate Residential (ER) in the Township of Collingwood Zoning By-law 83-40. Mr. Slade proposed a list of standard and site-specific conditions that the Applicant would agree to if the Board were to order that provisional consent be given (Exhibit 4). Mr. Slade's conclusions are contained in his planning report at page 23.

There was much debate on the intent of Section 4.12.3(2) from the Official Plan's Residential Infilling policies that reads: "Within registered plans of subdivision, further lot creation shall generally be prohibited in order to maintain the intended density and character of the development." While the Town holds the view that the norm is to prohibit lot creation in plans of subdivision, Mr. Slade opined that there is room for special considerations to be made within existing plans of subdivision.

Mr. Slade opined that another relevant policy to the consent applications is Section 3.15(4) that deals with Infilling and it is met:

All new lots must comply with the lot creation and land use policies of the Plan, including any environmental constraints, servicing and density and/or lot size provisions, with particular regard for the subdivision policies contained in Section 9. Such new lots for infilling purposes shall generally be consistent with the size of lots in the surrounding area.

Town Counsel Mr. Metras referred Mr. Slade to Policy 3.15(5) that states:

A plan of subdivision is designed with the purpose of establishing a particular character for development. As a general rule, the further division of a lot or block within a registered plan of subdivision shall not be permitted, unless specifically provided for under this Plan.

Mr. Metras suggested that the subdivision was designed with a particular character in mind and it has not changed in character or configuration (Estate Residential with large lots). Some newer homes have been built but while the type of development can change, the density has not and there have been no other severances on the lands (including an earlier severance application by the Applicant that the Town also rejected). The reality of full servicing has enabled the Applicant to bring forward this severance application. Mr. Slade responded that the HE Subdivision is more than 42 years old and he places greater significance on the words "general" and "generally" in the Town's Official Plan to leave room for consideration of severance applications within plans of subdivision as the OP does not expressly forbid such lot creation in plans of subdivision.

Shawn Postma is the planner for the Town of Blue Mountains and he was qualified to provide evidence in opposition to the application. His planning report is at Exhibit 5, Tab 7 and this was only his second appearance before the Board.

Mr. Postma made note of the age of the HE Subdivision in the context of later registered subdivisions. He told the Board that most of the development occurring around the HE Subdivision has only happened in the last ten years. He reiterated Mr. Metras' statement that this Estate Residential plan of subdivision and its lot configurations have not changed and is a stable, residential neighbourhood that has existed since the mid-1960s.

Mr. Postma made a less extensive review of the various policy documents than that provided by Mr. Slade, but all of the relevant documents were touched upon and planning opinions were offered. In fairness, Mr. Postma was able to rely on the contextual information that Mr. Slade provided in his capacity as the first planning witness as well as rely on some of the uncontested facts regarding the subdivision.

Mr. Postma's evidence and resulting planning opinion differs substantially from Mr. Slade on the fundamental issue of character of the area. Where Mr. Slade reviewed this subdivision in the context of what is occurring on the lands around the subdivision, Mr. Postma opined that the HE Subdivision has provided for one type of housing on Margaret Drive for more than four decades – single-detached dwellings on large estate lots.

Mr. Postma agreed with Mr. Slade that the PPS provides land use planning policies that promote intensification and redevelopment to accommodate an appropriate range and mix of housing and other land uses, but Mr. Postma qualified his opinion by noting that not all land must be subject to this policy goal. In his opinion, severances do not have to occur in each and every instance and the local Official Plan is the most important document in such cases. Moreover, he opined that the Town's Official Plan provides clear policies in this regard and the HE Subdivision is an inappropriate place to approve a severance application.

As he noted from his reading of Policy 4.12.3(2) (general prohibition of further lot creation in registered plans of subdivision), there are only certain circumstances where such further division should fall, and then these should be covered by the Official Plan infilling policies in sections 3.15(4) and (5). These provide two key components of a consideration of severance applications: lot size with the actual numbers and the character of the area.

One of Mr. Postma's concerns was that splitting an existing 4,100-square-metres parcel, already below the average, into two new lots of 2,050 square metres, would create the smallest lots in the HE Subdivision. These two new lots would have approximately half of the average lot size in the subdivision and 60% of the area of the smallest lot. He does not agree with Mr. Slade's reference to a larger study area to form his planning opinion for the HE Subdivision and these severance applications. Rather, Mr. Postma opined that it is not appropriate to compare the lot sizes, areas and frontages in the western Alta Subdivision and other newer subdivisions that were approved under more modern planning policies with what is proposed here. These areas are comprised of smaller lots developed on full municipal services in a more clustered format that include generous open space as required by the Official Plan.

The Recreational Residential policies from the older Craigeith Official Plan were brought into the new Town of the Blue Mountains Official Plan (4.1.3(2) and (3)). Mr. Postma opined that the proposed lots are not consistent with the lot sizes in the HE Subdivision and even if they were considered in a context beyond the HE Subdivision, the new lots will still be larger than what is being created in the Alta and Wilson Subdivisions.

Supporting Mr. Postma's methodology, which was to confine his area of study to the HE Subdivision, was his examination of the character of area and the connectivity between the HE Subdivision and these other subdivisions. He noted that the HE Subdivision is a separate area both in terms of distance and connectivity and like Mr. Slade, he noted the topographical barriers around this subdivision. Despite the growth of the area around the HE Subdivision, this subdivision is unique and has been created under an older style of development in contrast to the newer developments. He opined that Margaret Drive, as a private cul de sac street, has its own unique character.

Mr. Postma opined that the proposed severance application does not maintain the character of the area and the age of the subdivision plays a part in establishing the character. He said that one does not see, nor does the Town allow, these types of subdivisions to be created today, thereby contributing to the "special" and "unique" character of the HE Subdivision. He said that while new development is required to set aside open space at a minimum of 40% of a total subdivision, the lots in the HE Subdivision already provide considerable private amenity space which enables subdivision residents to build larger homes if they choose, while still having ample

space for landscaping and tree planting, thus creating capacity to blend usability between the built elements and vacant elements of the subdivision.

Mr. Postma said that not only does the proposed consent application not comply with the provisions of the Official Plan but also the new lot will impact the character in an area that should have its original intended character, density and design preserved. He reiterated his view that it is inappropriate to compare this subdivision with the newer subdivision styles, particularly those developed in the last ten years where a cluster format design predominates with generous provisions for open space. Mr. Postma opined that if this application was granted, it could open an avenue for additional consent applications, based simply on the zoning provisions.

Planner Rick Jones is a professional planner with more than thirty years' experience who appeared as an interested participant in these proceedings on behalf of HE Subdivision resident Roger Oatley. Mr. Jones is the former director of planning for the City of Barrie and is a past seasonal resident of the area. He provided a document book that contained his planning evidence and opinion in opposition to the severance application. Mr. Greenfield cautioned that Mr. Jones' opinion could be biased in that he is representing an area resident opposed to the consent. However, the same argument could be made against Mr. Slade's opinion as the Applicant retained him to support the consent application. Whether representing a party or participant to a hearing, the opinions of two professional planners are based on their review of the circumstances of the case and each must decide whether he can or cannot support the consent application. Both Mr. Jones and Mr. Slade are experienced planners who each take a position in respect of the application. As such, their professional opinions will be considered and weighed in a manner the Board determines to be appropriate and irrespective of whether they represent a party or an interested participant.

Mr. Jones echoed Mr. Postma's concern regarding the impact of this application on the character of the HE Subdivision and he expanded on that point. He opined that the issue of character relates to the amount of open space that each lot has. The buildings can be large but the huge amount of amenity space is part of the character and residents of the subdivision fear that the proposed severance would become an anomaly in relation to the built form configuration and character.

The Official Plan Schedule A map shows that the lots of the HE subdivision plan are larger and that fact sets up circumstances of uniqueness. Mr. Jones opined that it is unusual within the context of the area and the character is a matter that becomes even more worthy of protection. As the band of open space to the south of the HE Subdivision provides a separation, and to the west, the land dedicated by an owner as well as the ravine, are part of the topography that separates the subdivision and reinforces the character for the Applicant's neighbours that is worthy of protection, as is their longevity on the property. Mr. Jones noted that some of the neighbours have lived in the Subdivision since the 1960s; some as seasonal residents and others as year-round residents. He opined that they are deserving of certainty in the character and stability in terms of the lot fabric.

Mr. Jones' view of the PPS differs from both Mr. Slade's and Mr. Postma's reading of the planning policy instrument. While he noted the laudable goals of Policy 1.1.3.3 as already cited, he cautioned that this is an area of second homes and many area residents who actually live elsewhere. As such, the need to intensify and create development opportunities must be considered from a common sense perspective. This is an area of recreation and the need to generate more houses does not exist. One does not need to intensify in a recreational enjoyment area as it might be more appropriate to do on other types of lands. In this regard, the PPS should be implemented within the policies of the Official Plan and Mr. Jones opined that they are explicit regarding general prohibition of infill activities within R1 areas.

Mr. Jones called the HE Subdivision a 'cultural' formation and a 'longstanding' subdivision. The sense of protection the Town is maintaining by denying the severance application in this area is based on the premise that the approval would erode the character of the area and that sense of protection is contained in Policy 1.3.1 of the Town's Official Plan: "The appearance and quality of the diverse physical environment is an important asset within the Town."

He opined that policy 1.3.2(7) provides a sense of 'certainty':

The Town's Official Plan policies are intended to serve as a growth management strategy that will guide growth and settlement in accordance with the long-term goals and objectives of the municipality. The vision for future growth and settlement contained in this Plan incorporates a detailed land use designation and policy framework designed to ensure the many attributes of the municipality are: conserved for the benefit of future generation; provide certainty and direction for growth...

Mr. Jones opined that approval of the severance would destroy a sense of certainty on which the residents can rely in respect of their community and as Mr. Postma revealed, there currently exists a number of other 'candidate' lots that could be redeveloped and severed. Demolition of some of the existing older homes and subdivision of the lots would create a sense of loss; a loss of open space; and create a subdivision that is more closely associated with every other newer subdivision in the Blue Mountains. Thus, the concepts of certainty and character must be emphasized in his view.

Mr. Jones noted that the HE Subdivision was developed on a different premise – that of private servicing on larger lots – and there is no need for change to take place through a severance application. He said that the provision of private amenity space is part of the subdivision's unique character and simply because it is now fully serviced should not mean that it become the subject of a severance application.

Mr. Jones testified that in consideration of Policy 3.15(1) of the Town's Official Plan (that infilling should generally conform in style and character with surrounding development), this proposal is opposed to the character of the HE Subdivision as it is about half the size of the lots and in no way can be considered as usual. Rather, it is unusual and an anomaly that would appear odd and out of place.

Mr. Jones noted that the Plan's parameters for consents are some of the tightest regulations he has seen. In his review, there is an absolute prohibition on lot creation in plans of subdivision. In his reading of Policy 4.12.3, the HE Subdivision is the neighbourhood to be studied and the proposed lots would be distinct from what already exists. There is no discussion in the OP to suggest that the HE Subdivision is merely a segment of the overall subdivision area. It is different in its formation; it is isolated; the lots are larger and the housing stock is distinct too; it is older and reflects an earlier construction period; it is less grand; and this is the way that the subdivision's existing residents prefer it remains.

In respect of the Section 9 Subdivision of Land policies, Mr. Slade suggested that the zoning with the proposed severance complies with the ER zoning. However, Mr. Jones opined that as with most areas, the zoning here is loose and it should not be used as a guideline to promote a severance. It does not provide an accurate

representation of what the subdivision offers and it should not be used as a lever to enact this severance application. One must look to the OP for guidance in this regard.

In respect of Consent policy 9.3(6), the issue of character surfaces as the proposed lots would be half the size and would not correspond with the existing development fabric:

In considering an application for consent, the scale and density of existing and proposed development, and any potential adverse impacts, shall be taken into account. New lots shall generally be in keeping with the character of the surrounding area.

Character is covered in 9.3(12)(a): "The location, design, size and density retain the open landscape character..." and he opined that the open landscape space would not be realized on the severed or retained lots. Mr. Jones opined that there is no pressing need for this severance; the Town has made its projections for future development; and both the Town and the Applicant's neighbours are cognizant that these enclaves should be protected in the context of the Official Plan.

Mr. Jones reviewed the relevant criteria of Section 51(24) of the Planning Act and opined that there are no issues of provincial interest addressed through this application and that no intensification is lost by not approving the severance application. He opined that the proposal goes beyond the issue of prematurity and should not be proposed. The proposal does not conform to the Official Plan and the land is unsuitable for the purposes for which it is to be subdivided in that the proposed lots are too small in relation to what surrounds them. He noted that Mr. Slade had pointed out several constraints created by approval of the severance: buildings must be relocated; a special front yard setback is proposed; and conditions have been offered.

He said the proposed lots are too small and incompatible with the surrounding area. This creates a threat to the neighbourhood as well as an impact on the residents' enjoyment of an area they have enjoyed for decades. He opined that the Applicant's suggestion of financial hardship to create the lots is not a planning issue and approval of the severance would alter negatively the character of the subdivision.

Mr. Greenfield questioned Mr. Jones' position that the HE Subdivision is unique in character, but his questioning did not undermine the planner's opinion that the openness of the lots and the buildings in relation to the lot sizes is modest. He added that seeing an extra driveway would create a perception that the lands are not in

character with the rest of the subdivision. The lots would be half the size of the other lots and would create uncertainty about future development in the area. The proposal also creates extreme change and is unnecessary.

While Mr. Jones agreed that there is no absolute prohibition on this type of lot in the Official Plan, there are policies about consent that imply to him that this severance is an inappropriate one. Mr. Greenfield noted that official plans are not statutes but rather, they are guides that are meant to be interpreted and contain no absolute prohibitions. Mr. Jones defended his review of only the HE Subdivision as it has no effect on lands elsewhere and the impact is realized here in this subdivision.

Interested participant Ken Fong is a seasonal resident at 107 Margaret Drive and he represented a number of area residents who oppose the application. He said the HE Subdivision is a distinctive enclave and both a private and segregated subdivision. The lots as proposed will be incompatible with the surrounding lots.

He told the Board that the subdivision's character deals with the area's physical and tangible attributes. Lots are one acre or more in size; it is a 40-year-old neighbourhood and no severances and no more plans of subdivision of this type will be developed in the Town of the Blue Mountains; the streetscape is important as it is a dead end; there are no lights, sidewalks or storm sewers as in the newer surrounding areas; homes are of varying sizes and age; and the private spaces occurring in the subdivision contribute to the unique character. There is generous private amenity space on each lot so that they do not appear crowded or stacked as opposed to the Alta and Wilson subdivisions. He said that as one enters Margaret Drive, one would see two smaller lots in an area of large lots. While there are trees on the subject lands, leaves on the deciduous trees will be missing in the winter month, leaving a house visible from the road. The proposed severance will destroy the unique character and a forty-year pattern of development; it will disrupt a similar private amenity space afforded to all residents in the subdivision; and as the smallest lots in the area, they would create a lot anomaly for their size.

In addition to the documentary evidence and the evidence of the interested participant, the Board has carefully considered the professional planning evidence and opinions of the three planners. The Board prefers the evidence and opinions of Mr. Postma and Mr. Jones to that of Mr. Slade with regard to the policies of the Official Plan

and Section 51(24) of the *Planning Act*. Specifically, the proposed severance does not meet criterion 'c' of this section of the *Act* and does not conform to the relevant consent policies of the Official Plan. The Board determines that Mr. Slade offered no persuasive evidence that the Applicant's property is an appropriate site for severance and most notably, that the resulting severance would alter the character of the HE Subdivision.

In this regard, Mr. Postma and Mr. Jones offered more persuasive evidence and opinions to support their position that the character of the Subdivision would be adversely impacted by the severance. The Board found their evidence to be more persuasive in defining the HE Subdivision as 'the' area of study and that the severance should be considered in the context of that area, and not in comparison to newer developments and proposed developments as Mr. Slade did. There is sufficient visual and documentary evidence to show the topographical features and Arrowhead Road surround this Subdivision so that one might reasonably call it an enclave. The Board accepts this terminology by virtue of its age, design and features unique to it. These are relevant considerations in the case at hand and they have been satisfactorily presented as relevant to the definition of this subdivision as being of a character that is distinguished from other newer developments beyond it. The correct area of study for the purposes of this hearing is the HE Subdivision itself and not consideration of larger, newer existing and proposed developments.

From a review of the planning evidence, the Board determines the proposed severance of the lot will adversely affect the subdivision's character. The severance would be discernible to the area's long-term seasonal and permanent residents who oppose it. For at least part of the year, a newly added house on the severed lot, potentially of considerable size, would be visible when leaves were off the deciduous trees. It is not sufficient to suggest that because one will not see much of what is occurring behind thick vegetation, one can consider this severance to be appropriate. Were the severance to be granted, it would certainly create a change to the lot fabric of the area. The Board determines that the street's residents should have some comfort in the knowledge that the lots on this street are not subject to the more intense form of development occurring on lands around it. Its older character is undisputed and by extension, both Mr. Postma and Mr. Jones said the larger area is not under the same pressure to intensify as other centres. Moreover, the Town has laid out specific plans for the intensification of its lands through its Official Plan. And, as character is an

important consideration that must be preserved for lot creation in plans of subdivision, and is so stated in various Official Plan policies, the Board determines that the proposed severance does not conform to the Official Plan policies.

By extension, criterion 'f' of Section 51(24) of the *Act* is also not met as the dimensions of the proposed severed and retained lots are not in keeping with the other lots in the HE Subdivision. Lots half the size of the average lots in this subdivision would be created and the Board accepts both opposing planners' opinions that this creates an anomaly in the Subdivision. The Board does not accept Mr. Slade's opinion that the proposed consent and resulting new lot represent an 'excellent' example of implementation of the intensification and re-development policies of the PPS and the Official Plan's policy that encourages infilling within built-up areas (Section 1.3.4), especially where the opposing planners noted other such opportunities that would enable those applications to meet the requirements provided for in the *Act*.

It is also not enough that the proposed severance and retained lot are in compliance with the implementing ER Zone in respect of the zoning standards. The Board had to look more broadly to the Official Plan policies as cited by the planners to consider how the proposal will affect the character of the area and it has made its findings in this regard. Specifically, the Board does not accept that the proposed lot creation maintains the 'intended character' of the Official Plan (as the policy states) and it does not conform to Policy 4.12.3(2) as referred to by all planners, particularly the first sentence of this policy as referred to by Mr. Slade.

The Board accepts the evidence of Mr. Postma and Mr. Jones that the proposed severance application does not represent good planning. The Board accepts the proposition that one can agree with the goals of the PPS, but one does not have to intensify every piece of land. The Board accepts that the HE Subdivision is a stable neighbourhood. As Mr. Jones opined, there is no evidence to suggest there is a deterioration of the existing housing stock (although there have been some newer built forms appearing in the subdivision) and there is no pressure to intensify.

The Board read the previous Board order contained in Mr. Slade's Evidence Package but it must distinguish that case from what is proposed in this case. While that case dealt with the similar circumstance of consent applications, the Board in this case is dealing with a proposed severance of a large lot within a defined, established and

decades-old subdivision that is separated by topography and a road from other newer development. In that previous decision, the Board heard evidence from the same parties' counsels and planners and determined that while Section 4.12.3(2) of the Official Plan does not prohibit lot creation within plans of subdivision, there are occasions where it is permitted where the density and character of the development are maintained. As the Board found in that case: "The use of the word "generally" in section 4.12.3(2) leaves open the possibility of lot creation in some circumstances." The Board went on to find those circumstances were in place for it to give provisional consent.

The Board in this case reiterates its earlier interpretation of this policy as articulated by Mr. Slade and acknowledges that there is no expressed intention in the Plan's policy to prohibit lot creation within plans of subdivision. However, the Board determines there are no circumstances in this case to warrant that provisional consent be given by virtue of the proposed severance's adverse impact on the character of this subdivision. The proposed severance does not represent good planning because it does not conform to the appropriate and relevant policies of the Official Plan, and there is no planning rationale to ignore the Official Plan's policy that lot creation in plans of subdivision is generally prohibited.

Having considered all of the evidence, the Board dismisses the appeal. The Board determines that the proposed consent does not satisfy all of the applicable criteria of Section 51(24) of the *Planning Act*. Accordingly, the Board orders that provisional consent not be given.

So orders the Board.

"Reid Rossi"

R. ROSSI
MEMBER

