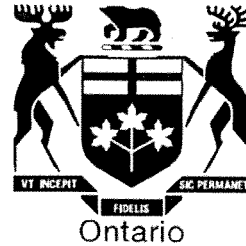


**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** July 3, 2015

**CASE NO(S):** PL141196

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

Applicant and Appellant:	Schuyler Farms Limited
Subject:	Consent
Property Address/Description:	5017 Highway 3, Townsend
Municipality:	Norfolk County
Municipal File No.:	BNPL20140488
OMB Case No.:	PL141196
OMB File No.:	PL141196
OMB Case Name:	Schuyler Farms Limited v. Norfolk (County)

**Heard:** April 9, 2015 in Norfolk County, Ontario

**APPEARANCES:**

**Parties**

Schuyler Farms Limited  
Norfolk County

**Counsel**

K. Jones  
P. Tice

**DECISION OF THE BOARD DELIVERED BY J. V. ZUIDEMA AND ORDER OF THE BOARD**

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[1] Schuyler Farms Limited ("Appellant") filed an application for a consent with Norfolk County ("County") in order to create a new lot in an agricultural zone. The property in question is located at 5017 Highway 3 Townsend ("subject property") and is part of a larger farm holding purchased in 2014 by Schuyler Farms Ltd. ("Ireland Farm").

[2] It is designated Agricultural in the County's Official Plan ("OP") and zoned Agricultural (A) in the City of Nanticoke Zoning By-Law NW 1-2000 ("ZBL").

[3] The Committee of Adjustment refused the application and the Appellant appealed to this Board.

[4] In a nutshell, the Appellant argued that what was being proposed was not the creation of a new lot in an agricultural area but rather a relocation of an existing lot. That existing lot had been severed around 1981 and the Appellant's plan was to have it merge back to the surrounding farm property purchased in 2011 by Schuyler Farms Ltd. and Max Marshall Schuyler ("Patterson Farm") such that the net effect would mean no new lot would be created. He also said this would eliminate potential traffic hazards which currently exist and a land use conflict with the adjacent industrial use.

[5] While I admire the creativity of this approach, it flies in the face of Provincial Policy which specifically prohibits severances in the agricultural area except in the case of a farm residence surplus to a consolidation. The appeal is dismissed and my reasons with analysis are set out below.

[6] I accept and prefer the evidence of the County's Planner, Mathew Vaughan and Scott Oliver, Planner for the Province over David Rowe, Planner called on behalf of the Appellant.

[7] On behalf of the Appellant, I heard also from Brian Patterson, the owner of the industrial property referenced above where he runs his business, Simcoe Springs and Suspension. He bought the industrial site which is a parcel carved out of the Patterson Farm along Highway 3 in 1986 and the existing lot (proposed to be merged to the Patterson Farm) in 1987 and sold it for \$15,000.00 to the Appellant in 2014.

[8] I heard from Marshall Schuyler and Brett Schuyler, principal with the Appellant company and his family member. I have no doubt that the Appellant is a bona fide farming operation which has existed for many years.

[9] Marshall Schuyler explained his reasons for the proposed re-location: safer access, eliminate odour impacts from nearby cow-calf and poultry operations, eliminate noise from the Simcoe Springs business, avoid dealing with the Ministry of Transportation ("MTO") for access permits to Highway 3, and finally, mitigate against agricultural impacts.

[10] I was also advised that the Appellant had already obtained another severance from their Ireland Farm property on the basis of a residence surplus to a farm consolidation. The proposed severance now before me would be a second severance from the Ireland Farm.

[11] Finally, on behalf of the Appellant, I heard from Frank Berry, qualified as an expert in traffic engineering and Sean Colville, qualified as an expert Agrologist. Mr. Berry provided evidence to support the re-location as from a traffic perspective; its new location is simply safer. I have no reason to doubt this.

[12] Mr. Colville explained that the new location is better from a Minimum Distance Separation ("MDS") perspective. Through cross-examination by Mr. Tice, Counsel to the County, Mr. Colville conceded that by applying the 2007 MDS Guidelines, there would be impacts to the proposed lot.

[13] I found the evidence provided by Messrs. Berry, Colville, Patterson, Schuyler Sr. and Schuyler Jr. interesting and informative. However, it was not sufficient for me to ignore the policy directives contained in the 2014 Provincial Policy Statement ("2014 PPS") and the County OP.

[14] This application failed squarely because it violated the 2014 PPS and under the *Planning Act*, my decision must be consistent with that policy.

[15] The Appellant's Planner would want to characterize this application as a "re-location" and not the creation of a new lot. I disagree. There is no provision for this type of interpretation in the 2014 PPS. It is in fact the creation of a new lot and a

proposed subsequent merger of an existing lot.

[16] I accept Mr. Vaughan's opinions when he explained that the proposed consent violates the County's OP and in doing so, infringes ss. 51(24)(c) of the *Planning Act*. Specifically, he took me to policy 2.3.1.2 (h) which reads as follows:

Ensure the continued economic strength of agriculture and the viability of farm operations by protecting agricultural activities and the agricultural land base from the intrusion of incompatible uses.

[17] The subject property is located in a prime agricultural area. The County's OP also contains policies to protect such land. See for example policy 3.7.1. It is clear from reviewing the County OP, its policies reinforce the directives set out in the 2014 PPS. As noted earlier, the 2014 PPS is quite stringent about lot creation in the agricultural area. Policy 2.3.4.3 states that the "creation of new residential lots in prime agricultural areas shall not be permitted, except in accordance with policy 2.3.4.1(c)."

[18] 2.3.4.1 (c) refers to a residence surplus to a farming operation as a result of a farm consolidation with conditions. This proposal does not satisfy this exception.

[19] Mr. Rowe testified that policy 2.3.4.3 was not applicable given that in his view, the proposal was not the creation of a new lot. Instead he relied upon policy 2.3.4.2 which states "lot adjustments in prime agricultural areas may be permitted for legal or technical reasons." He opined that the proposed severance was a lot adjustment and this policy would permit this severance.

[20] One is required to look to the definition of "legal or technical reasons" when assessing this policy. The 2014 PPS defines it as "severances for purposes such as easements, corrections of deeds, quit claims, and minor boundary adjustments which do not result in the creation of a new lot."

[21] Mr. Rowe asks that I replace the words "new lot" with "additional lot" when reading this definition. He relies on his reading of policy 4.2.3 (a) (vi) of the County's

OP to arrive at his interpretation. That policy states:

Technical reasons including minor boundary adjustments, corrections of deeds, quit claims, easements or rights-of-way, or other purposes that do not create an additional separate lot, [emphasis added] and which do not change the lot configuration such that a non-agricultural lot is created which would not be in conformity with the policies of this Plan.

[22] First, such an amendment as suggested by Mr. Rowe to the 2014 PPS definition completely changes the thrust of the definition and in my estimation is inappropriate.

[23] Second, the definition found in the County's OP adds the caveat "which do not change the lot configuration such that a non-agricultural lot is created which would not be in conformity with the policies of this Plan." The proposal before me results in the further fragmentation of the agricultural area, an area which the County policies seek to protect. This in itself results in nonconformity with the policies of the County's Plan. As such, I do not accept Mr. Rowe's methodology to refine the PPS definition.

[24] Third, this proposal does not fall into any of the categories enunciated by the definition. To characterize this proposal as a lot adjustment based on legal and technical reasons is illogical.

## ORDER

[25] Therefore, the Board orders that the appeal is dismissed and the consent sought is not approved.

*"J. V. Zuidema"*

J. V. Zuidema  
VICE-CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario

Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

File Number BNPL2014088 Application Fee ✓  
 Related File Number — Conservation Authority Fee N/A  
 Pre-consultation Meeting On early May OSSD Form Provided N/A  
 Application Submitted On May Sign Issued ✓  
 Complete Application On May 21 / 2014 KR.

This development application must be typed or printed in ink and completed in full. An incomplete or improperly prepared application may not be accepted and could result in processing delays.

Property assessment roll number: 3310-<sup>336 -</sup>080 - 60900

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Creation of a new lot  | <input type="checkbox"/> Boundary adjustment |
| <input type="checkbox"/> Surplus Dwelling                  | <input type="checkbox"/> Easement            |
| <input type="checkbox"/> Farm Split (form to be completed) | <input type="checkbox"/> Right-of-way        |
| <input type="checkbox"/> Other (lease / charge)            |  |

### A. APPLICANT INFORMATION

Name of Applicant <sup>1</sup> Schuyler Farms Limited Phone # (519) 426-5784  
 Address 303 14<sup>th</sup> Street East Townsend Fax # 426-7838  
 Town / Postal Code Simcoe, On N3Y 4K3 E-mail —

<sup>1</sup> If the applicant is a numbered company provide the name of a principal of the company.

### AGENT INFORMATION

Name of Agent R.C. Dixon Phone # (519) 426-0456  
 Address 13-175 Victoria St. Fax # cell 410-1632  
 Town / Postal Code Simcoe, On N3Y 5L8 E-mail dixonr@amtelecom.net

### OWNER(S) INFORMATION Please indicate name(s) exactly as shown on the Transfer/Deed of Land

Name of Owners <sup>2</sup> same as applicant Phone # —  
 Address — Fax # —  
 Town / Postal Code — E-mail —

<sup>2</sup> It is the responsibility of the owner or applicant to notify the Planner of any changes in ownership within 30 days of such a change.

Please specify to whom all communications should be sent <sup>3</sup>: ☐ Applicant ☒ Agent ☐ Owner

<sup>3</sup> Unless otherwise directed, all correspondence, notices, etc., in respect of this development application will be forwarded to the Applicant noted above, except where an Agent is employed, then such will be forwarded to the Applicant and Agent.

Names and addresses of any holders of any mortgages, charges or other encumbrances on the subject lands:

## B. LOCATION/LEGAL DESCRIPTION OF SUBJECT LANDS

Geographic Township	<u>Townsend</u>	Urban Area or Hamlet	_____
Concession Number	<u>14</u>	Lot Number(s)	<u>16</u>
Registered Plan Number	_____	Lot(s) or Block Number(s)	_____
Reference Plan Number	<u>37R3198, 37R4574 - D-5</u>	Part Number(s)	_____
Frontage (metres/feet)	<u>535 m ±</u>	Depth (metres/feet)	<u>647 m ±</u>
Width (metres/feet)	<u>780 m ±</u>	Lot area (m² / ft² or hectares/acres)	<u>44.5 ha</u>
Municipal Civic Address	<u>5017 Hwy N-3 East</u>		

For questions regarding requirements for a municipal civic address please contact [NorfolkGIS@norfolkcounty.ca](mailto:NorfolkGIS@norfolkcounty.ca).

To obtain your municipal civic address for the severed lands please contact your local building inspector.

Are there any easements or restrictive covenants affecting the subject lands?

☐ Yes

☒ No

If YES, describe the easement or covenant and its effect:

## C. PURPOSE OF DEVELOPMENT APPLICATION

Please explain what you propose to do on the subject lands/premises which makes this development application necessary (if additional space is required, please attach a separate sheet):

The intent of this application is to move a previously severed vacant lot to a better location to eliminate safety concerns and to address M.T.D. concerns under Controlled Access Highway Regulations.

Name of person(s), if known, to whom lands or interest in lands is to be transferred, leased or charged (if known):

—

If a boundary adjustment, identify the **assessment roll number** and **property owner** of the lands to which the parcel will be added:

—



If the application involves the severance of a surplus farmhouse (through farm amalgamation), please list all properties in Norfolk County, which are owned and farmed by the applicant and involved in the farm operation:

Owners Name and Address (including those with part interest) Assessment Roll No. (obtained from your tax bill)	Geographic Township Concession and Lot #	Total Acreage (individual property)	Acres Workable (individual property)	Existing Farm Type (individual property e.g. corn production, orchard, tobacco)	Dwelling Present	Year Dwelling Built
<b>SUBJECT LANDS</b>					<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>OTHER</b>					<input type="checkbox"/> Yes <input type="checkbox"/> No	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	

If the application proposes to divide a farm into two smaller agricultural parcels, please complete the following:

Description of Land	Lands to be Severed	Lands to be Retained
Area under cultivation	(m <sup>2</sup> / ft <sup>2</sup> or hectares/acres)	(m <sup>2</sup> / ft <sup>2</sup> or hectares/acres)
Woodlot area	(m <sup>2</sup> / ft <sup>2</sup> or hectares/acres)	(m <sup>2</sup> / ft <sup>2</sup> or hectares/acres)
Existing crops grown (type and area)		
Proposed crops grown (type and area)		

Description of Existing Buildings	Lands to be Severed	Lands to be Retained
Residence	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Livestock barn	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Type of livestock		
Capacity of barn		
Manure storage	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Type of manure storage		

Description of land intended to be SEVERED:

Frontage (metres/feet)	<u>63.4m</u>	Depth (metres/feet)	<u>63.4m</u>
Width (metres/feet)	<u>63.4m</u>	Lot area (m <sup>2</sup> / ft <sup>2</sup> or hectares/acres)	<u>0.40 ha</u>
		PROPOSED FINAL LOT SIZE (if boundary adjustment)	<u>—</u>

Existing use: vacant agriculture

Proposed use: residential

Number and type of buildings and structures **EXISTING** on the land to be severed, please describe in metric units, the setback from the front lot line, rear lot line and side lot lines, the height of the building or structure and its dimensions or floor area:

oil

Number and type of buildings and structures **PROPOSED** on the land to be severed, please describe in metric units, the setback from the front lot line, rear lot line and side lot lines, the height of the building or structure and its dimensions or floor area:

single family dwelling

Description of land intended to be **RETAINED**:

Frontage (metres/feet)	535 m ±	Depth (metres/feet)	647 m ±
Width (metres/feet)	780 m ±	Lot area (m <sup>2</sup> / ft <sup>2</sup> or hectares/acres)	44.1 ha ±

Existing use: vacant agriculture

Proposed use: residential

Number and type of buildings and structures **EXISTING** on the land to be retained, please describe in metric units, the setback from the front lot line, rear lot line and side lot lines, the height of the building or structure and its dimensions or floor area:

see attached sketch

Number and type of buildings and structures **PROPOSED** on the land to be retained, please describe in metric units, the setback from the front lot line, rear lot line and side lot lines, the height of the building or structure and its dimensions or floor area:

buildings to be removed

Description of proposed **RIGHT OF WAY/EASEMENT**:

n/a

Frontage (metres/feet)	_____	Depth (metres/feet)	_____
Width (metres/feet)	_____	Lot area (m <sup>2</sup> / ft <sup>2</sup> )	_____

Proposed use: \_\_\_\_\_

#### D. PROPERTY INFORMATION

Present official plan designation(s): Agriculture

Present zoning: Agriculture

Is there a site specific zone on the subject lands?

no

Has the owner previously severed any lands from this subject land holding or any other lands the owner has interest in since August 24, 1978?

☐ Yes ☒ No ☐ Unknown

If yes, indicate the file number and the status/decision: \_\_\_\_\_

Has any land been severed from the parcel originally acquired by the owner of the subject lands?

☐ Yes ☐ No ☒ Unknown

If yes, indicate the file number and the status/decision: \_\_\_\_\_

Number of separate parcels that have been created: \_\_\_\_\_

Date(s) these parcels were created: \_\_\_\_\_

Name of the transferee for each parcel: \_\_\_\_\_

Uses of the severed lands: \_\_\_\_\_

If this application proposes to sever a dwelling made surplus through farm amalgamation, when were the farm properties amalgamated? \_\_\_\_\_

Date of construction of the dwelling proposed to be severed: \_\_\_\_\_

Date of purchase of subject lands: 2014

## E. PREVIOUS USE OF THE PROPERTY

Has there been an industrial or commercial use on the subject lands or adjacent lands?

☐ Yes ☒ No ☐ Unknown

If yes, specify the uses: \_\_\_\_\_

Has the grading of the subject lands been changed through excavation or the addition of earth or other material?

☐ Yes ☒ No ☐ Unknown

Has a gas station been located on the subject lands or adjacent lands at any time?

☐ Yes ☒ No ☐ Unknown

Has there been petroleum or other fuel stored on the subject lands or adjacent lands at any time?

☐ Yes ☒ No ☐ Unknown

Is there reason to believe the subject lands may have been contaminated by former uses on the site or adjacent sites?

☐ Yes ☒ No ☐ Unknown

Provide the information you used to determine the answers to the above questions:

local knowledge

If you answered yes to any of the above questions, a previous use inventory showing all known former uses of the subject lands, or if appropriate, the adjacent lands, is needed.

Is the previous use inventory attached?

☐ Yes ☒ No

## F. STATUS OF OTHER PLANNING DEVELOPMENT APPLICATIONS

Has the subject land or land within 120 metres of it been or is now the subject of an application under the *Planning Act, R.S.O. 1990, c. P. 13* for:

1. a minor variance or a consent;
2. an amendment to an official plan, a zoning by-law or a Minister's zoning order; or
3. approval of a plan of subdivision or a site plan?

☒ Yes ☐ No ☐ Unknown

If yes, indicate the following information about each application: If additional space is required, attach a separate sheet.

File number: \_\_\_\_\_

Land it affects: being severed from same holding

Purpose: surplus dwelling severance

Status/decision: simultaneous to this application

Effect on the requested amendment: oil

Is the above information for other planning developments applications attached? ☐ Yes ☒ No

## G. PROVINCIAL POLICY

Is the requested application consistent with the provincial policy statements issued under subsection 3(1) of the *Planning Act, R.S.O. 1990, c. P. 13*?

☒ Yes ☐ No

If no, please explain:

this will conform to other Provincial Policy

Are the subject lands within an area of land designated under any provincial plan or plans?

☐ Yes ☒ No

If yes, does the requested application conform to or does not conflict with the provincial plan or plans:

Are any of the following uses or features on the subject lands or within 500 metres (1,640 feet) of the subject lands, unless otherwise specified? Please check the appropriate boxes, if any apply.

Use or Feature	On the Subject Lands		Within 500 Metres (1,640 feet) of Subject Lands (Indicate Distance)		
Livestock facility or stockyard (if yes, complete MDS 1 Calculation Form)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ distance
Wooded area	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	___ distance
Municipal landfill	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ distance
Sewage treatment plant or waste stabilization plant	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ distance
Provincially significant wetland (class 1, 2 or 3) or other environmental feature	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ distance
Floodplain	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ distance
Rehabilitated mine site	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ distance
Non-operating mine site within one kilometre	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ distance
Active mine site within one kilometre	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ distance
Industrial or commercial use (specify the use(s))	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ distance
Active railway line	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ distance
Seasonal wetness of lands	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ distance
Erosion	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ distance
Abandoned gas wells	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ distance

## H. SERVICING AND ACCESS

### WATER SUPPLY

#### SEVERED

#### RETAINED

Municipal piped water

☐
☐

Communal Wells

☐
☐

Individual Wells

☒

☐ n/a

Other means (describe) \_\_\_\_\_

### SEWAGE TREATMENT

#### SEVERED

#### RETAINED

Municipal Sewers

☐
☐

Communal System

☐
☐

Septic tank and tile bed

☒

☐ n/a

Other means (describe) \_\_\_\_\_

### STORM DRAINAGE

#### SEVERED

#### RETAINED

Storm Sewers

☐
☐

Open ditches

☒
☒

Other (describe) \_\_\_\_\_

Have you consulted with Public Works & Environmental Services concerning stormwater management?

☐ Yes ☒ No

Has the existing drainage on the subject lands been altered?

☐ Yes ☒ No

Does a legal and adequate outlet for storm drainage exist?

☒ Yes ☐ No ☐ Unknown

Existing or proposed access to the **RETAINED** lands:

- |  |   |
|--|---|
| <input type="checkbox"/> Unopened road                                 | <input type="checkbox"/> Provincial highway     |
| <input checked="" type="checkbox"/> Municipal road maintained all year | <input type="checkbox"/> Right-of-way           |
| <input type="checkbox"/> Municipal road maintained seasonally          | <input type="checkbox"/> Other (describe below) |

If other, describe: \_\_\_\_\_

Name of road/street: O'Mahoney Road

Existing or proposed access to SEVERED lands:

- |  |   |
|--|---|
| <input type="checkbox"/> Unopened road                                 | <input type="checkbox"/> Provincial highway     |
| <input checked="" type="checkbox"/> Municipal road maintained all year | <input type="checkbox"/> Right-of-way           |
| <input type="checkbox"/> Municipal road maintained seasonally          | <input type="checkbox"/> Other (describe below) |

If other, describe: \_\_\_\_\_

Name of road/street: O'Mahoney Road

## I. OTHER INFORMATION

Is there a time limit that affects the processing of this development application?

☐ Yes ☐ No

If yes, describe: —

Is there any other information that you think may be useful in the review of this development application? If so, explain below or attach on a separate page.

Rel. # 336-080-62500 to merge back into surrounding farm.