

**Update Week 97-38
Planning**

**Indexed as:
842678 Ontario Ltd. v. Niagara (Regional Municipality) Land
Division Committee**

**842678 Ontario Limited has appealed to the Ontario
Municipal Board under subsection 53(19) of the Planning
Act, R.S.O. 1990, c. P.13, as amended, from decisions of
the Regional Municipality of Niagara Land Division
Committee which dismissed two applications numbered B162/95
and B163/95 for consent to convey part of Lot 28,
Concession 7, in the Township of Wainfleet O.M.B. File Nos.
C 950226, C 950227**

[1997] O.M.B.D. No. 1176
File Nos. PL956379, C 950226, C 950227

**Ontario Municipal Board
C.M. Millar**

Oral decision: April 21, 1997
Filed: August 28, 1997
(2 pp.)

COUNSEL:

C. Shedden, for 842678 Ontario Limited.

MEMORANDUM OF AN ORAL DECISION AND ORDER OF THE BOARD delivered by C.M. MILLAR:--

¶ 1 The numbered company, 842678 Ontario Limited, owns land identified as being located at Part Lot 28, Concession 7, in the Township of Wainfleet. The company applied to the Regional Municipality of Niagara Land Division Committee for permission to sever and convey two lots. The application was denied and that decision has been appealed to the Board.

¶ 2 The subject property is located to the northwest of the intersection of Chippawa Road and Metler Road, as seen at Tab 1 of Exhibit 1. It fronts on both roads. When Chippawa Road was constructed it created a number of small lots.

¶ 3 The uncontradicted evidence was that the applications did not conform to either the Regional or Township Official Plans. However, on November 12, 1996, Township Council passed By-law 1448-96 to re-zone the subject lands from Agricultural A2-Zone to Estate Residential ER Zone. Section 24(4) of the Planning Act conclusively deems a Zoning by-law that does not conform to an Official Plan of a municipality to be in conformity with those plans where no appeal is taken. There was no appeal to By-law 1448-96. Therefore, the Board finds that the applications before it conform to a Zoning by-law which is deemed to conform to the Regional Official Plan as well as that of the Township because of the operation of section 24(4) of the Planning Act.

¶ 4 The lands which are subject of the application are vacant and not used for agricultural purposes. They are located in an area of small non-farm residential properties ranging in size from one acre to 10 acres. The proposal would result in a total of three lots on the property owned by the company. They range in size from 1.57 acres to 4.5 acres as seen at Tab 1 of Exhibit 1.

¶ 5 There was no evidence put to the Board to warrant a denial of the consent applications. Based on the overwhelming evidence in support, the Board finds that the intent of section 51(24) of the Planning Act has been met. Therefore, the Board gives provisional consent to sever and convey in accordance with the plan seen at Tab 1 of Exhibit 1. The Board so orders.

C.M. MILLAR, Member