

November 14th, 2017

Staff Report

To: City of Kenora Planning Advisory Committee **File Nos.:** D13-19-10 & D10-17-09

Fr: Devon McCloskey, City Planner

Location: 872 Anderson Road

Action: To Consider Approval/ Provisional Approval

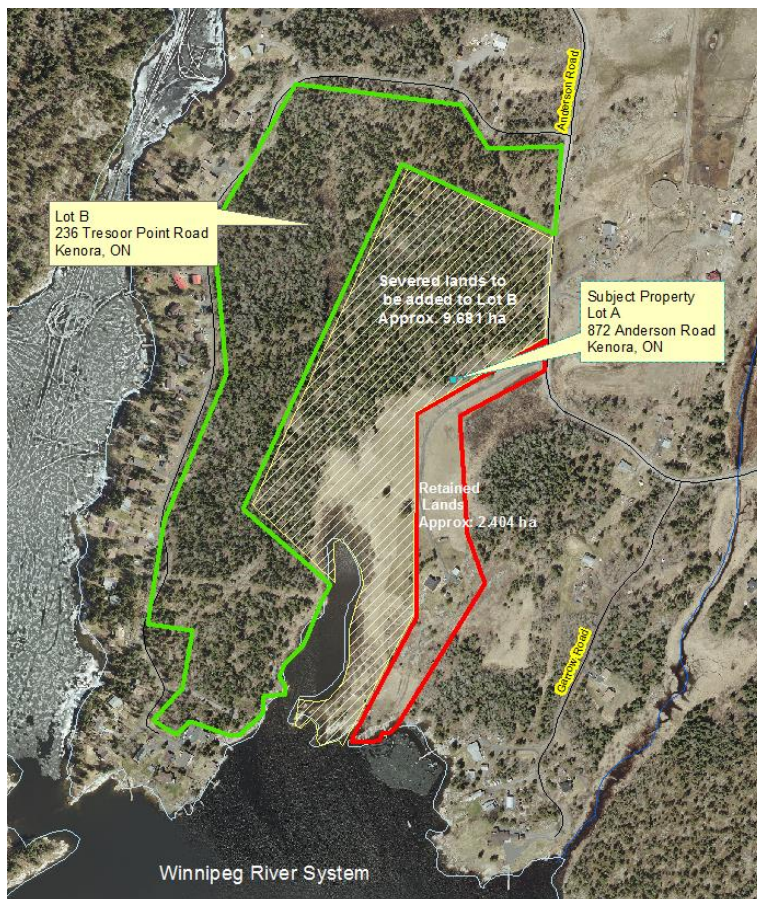
Re: Applications for Minor Variance & Consent for Lot Addition

Owners: Terry, Milena, David and Gisele Tresoor

Agent: Terry Tresoor

1. Introduction

Applications for Minor Variance and consent for lot addition are proposed for property located at 872 Anderson Road to create one (1) new lot, on property legally described s CON 1M MAJOR PT N OF S PT LT;17 PT PCL 10539 INCL KR1802; PT 1 PT KR442 LESS PT 23R8026, KR1241, KR1322 PT 1.



The purpose of the applications is to allow for a lot addition to property locally known as 236 Tresoor Point Road (Lot B). The application is being considered concurrently with an application for Minor Variance file number: D13-17-10; whereas, relief is being requested from Section 3.13.5 which restricts lot creation whereby the lot depth is more than five times the frontage (1:5 ratio).

The effect of the approval for consent, would be to sever approximately 9.681 ha of land from 872 Anderson Road (Lot A) and merge with 236 Tresoor Point Road (Lot B), the retained lands (Lot A) will be approximately 2.404 ha in size, lot frontage and building setbacks will remain compliant to the provisions of the zoning by-law 101-2015.

Refer to figure 1 aside for an illustration of the location.

2. Existing Conditions

The property is fronting on the Winnipeg River and receives road access via Anderson Road. The property is over 12 hectares with a frontage of 538.2 metres. It is zoned for residential use, and is developed with a single-detached dwelling constructed in 1935. There is also a 320 sq ft (29.7 sq m) sleep cabin, two sheds and a garage. It is serviced with a private septic and well. It is mostly cleared and grassy. There is a long driveway from Anderson road to the middle of the lot, where the dwelling and various accessory buildings are established, at the eastern side of the bay

Retained lot

Lands proposed to be retained would be reduced to approximately 2.4 hectares and provide the minimum frontage requirement of 61 metres. It will encompass the existing dwelling and interior secondary dwelling.

Severed area for lot addition

Vacant lands proposed to be severed for lot addition amount to approximately 9.6 hectares, with approximately 460 metres of shoreline frontage.

3. Background

The property recently received approval for a minor variance to permit an interior secondary dwelling within the existing single detached dwelling on private services, in September this year.

4. Site Visit

Photos from a previous site visit in September 2017 are included.



Photo 1 – West perspective entering the lot from Anderson Road

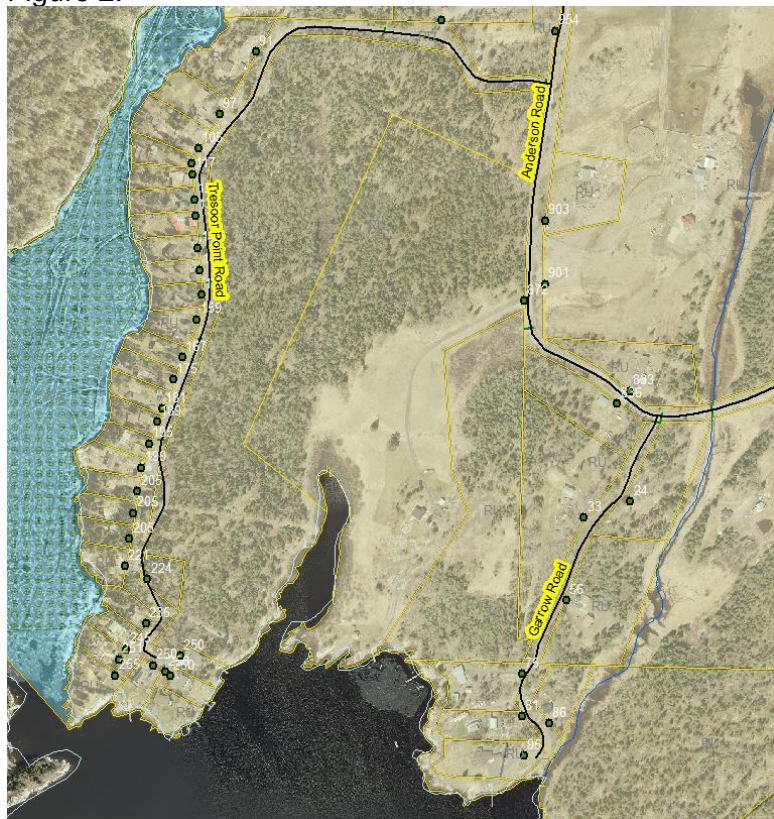
5. Consistency with Legislated Policy and City Directives

a) Provincial Policy Statement (2014)

The application for lot addition, generally supports direction under Policy 1.1.1 which promotes managing and directing land use to achieve efficient and resilient development and land use patterns, including efficient land use patterns, whereas the severance of a large portion of underutilized property may enable future development in a more effective layout.

b) City of Kenora Official Plan (2015)

Figure 2.



The property is Rural and is situated amongst other similarly designated lands.

3.13.1 Hazard Lands

For the purposes of this Plan, Hazard Lands include:

a) *Those lands along the Winnipeg River and Lake of the Woods that are defined as Hazard Lands on the basis of elevations identified by the Lake of the Woods Control Board. On the Winnipeg River, the following elevations define the Hazard Land designation from the Dalles First Nation upstream to the rapids below Rideout Bay at Old Fort Island below 320.6 m Canadian Geodetic Vertical Datum of 1928 (CGVD28); Old Fort Island upstream to the Lake of the Woods dams below 321.4 m CGVD28 datum. On the Lake of the Woods, the elevation correlating to the Hazard land designation is 324.60 m CGVD28 datum.*

Lands outside of those areas addressed by the Lake of the Woods Control Board that may also be subject to flooding and erosion, such as lands adjacent to watercourses and waterbodies

other than the Winnipeg River or Lake of the Woods. In these areas, Hazard Lands should be defined as follows:

- By engineered flood plain mapping, where it exists; and*
- Where there is no engineered flood plain mapping, Hazard Lands, as defined by this Plan should include:*
 - i. For slopes equal to or greater than 1:1, all lands within 15 m of the top-of-bank of any watercourse or water body; and*
 - ii. For slopes less than 1:1, all lands within 15 m horizontal distance of the 1:100-year flooding elevation along any watercourse or water body.*

For those Hazard Lands where there is no engineered flood plain mapping, and where Hazard Lands are defined by the 20 m setback, applications for Zoning By-law amendments to allow development and site alteration shall be considered on an individual basis, provided that such proposals are supported by engineered designs and prepared by a qualified professional engineer in accordance with provincial technical standards and to the satisfaction of the City, demonstrating that the site is safe for development in spite of naturally occurring hazards, such as flooding and erosion.

- e) Development and site alteration, including the erection and/construction of buildings or structures, and the placement or removal of fill, may be permitted, subject to rezoning, where there is no defined floodway and it can be demonstrated, to the satisfaction of the City, that:*
- the effects and risk to public safety are minor or can be managed or mitigated in accordance with provincial standards;*
 - new hazards shall not be created and existing hazards shall not be aggravated;*
 - no adverse environmental impacts will result;*
 - vehicles and people have a way of safely entering and exiting the area during times of flooding, erosion and other emergencies; and*
 - the development will not include institutional uses or essential emergency services or the disposal, treatment or storage of hazardous substances.*

Section 8.11.4 of the Official Plan provides policy for the creation of new lots:

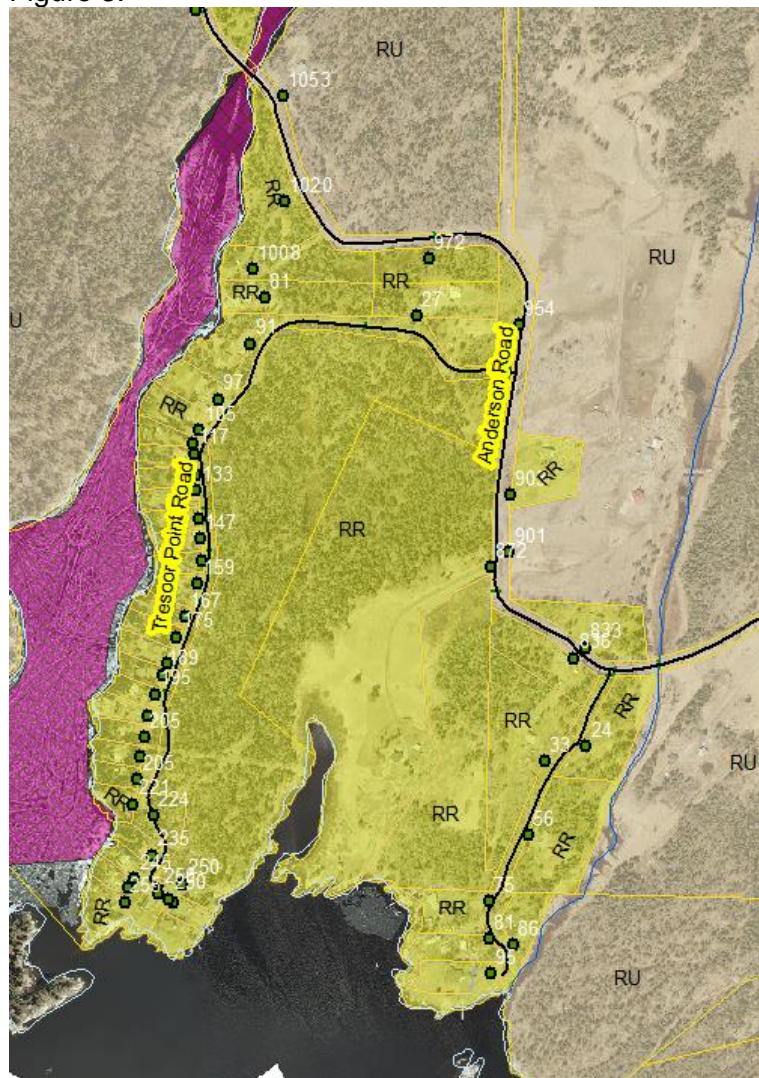
g) Lot creation shall not be granted or approved in the following circumstances:

- for a parcel of land that is zoned Environmental Protection or Hazard Land which is subject to flooding unless sufficient non-hazardous land forms part of the severance to permit all buildings for human occupation*

j) Hazard lands, as defined in the Hazard Lands section of this Plan, shall not be included in minimum lot area calculations, as established in the Zoning By-law.

b) Zoning By-law No. 101-2015

Figure 3.



Section 4.5 of the Zoning By-law provides for the use of single detached dwellings on lots meeting a size of 1 hectare, with 61 metres of frontage.


Sections 3.29 and 3.30 also provide regulation applicable to the subject application, whereas septic fields are not permitted to be located closer than 30 metres to a watercourse.

Section 4.17 provides regulation as to the permitted use of shoreline on the Winnipeg River:

- c) *No habitable building or structure in this Zone shall have a window or other opening on the Winnipeg River for the following elevations:*
 - i. *from the Dalles First Nation upstream to the rapids below Rideout Bay at Old Fort Island below 320.6 m Canadian Geodetic Vertical Datum of 1928(CGVD28);*
 - ii. *Old Fort Island upstream to the Lake of the Woods dams below 321.4 m CGVD28 datum.*

6. Results of Interdepartmental and Agency Circulation

Departments and Agencies Circulated	Comments Received
Municipal Engineer	No issues or concerns – September 29/17
Building Department	No concerns – October 30/17
Roads Department	If new entrances are proposed, permit will be required.
Water & Wastewater Department	Privately Serviced
Hydro One	No comments received
Kenora Fire & Emergency Services	Kenora Fire has no issues with these applications. Please note that proper burning permits are required if disposing of cleared timber or brush – October 27/17
Northwestern Health Unit	<p>Raised fields need to be further from features such as wells, dwellings, watercourses and property lines than the minimums listed in Table 8.2.1.6.B of the Code.</p> <p>Side property line would need to be a minimum of 20 feet away from the piping. The downslope mantle on the field is going to extend towards the water. It needs to be fully contained on the same lot but can go right up to the property line.</p> <p>The header was discussed to be on the uphill side with the distribution lines pointed at the water to minimize uneven settling of this important part. If the lines are in the order of 40 to 50 feet long and with a 50 foot mantle extending down from the end—this would make the new line between the home and the river a minimum of 90 feet down from where the header is located. The header is proposed to be below the existing field that is already off of the plan as drawn.</p> <p>We did not measure where the header would be but it is around 60 feet, maybe 75 feet from the house so you can see that the new property line is going to need to extend quite a distance down from the home. Turning the field sideways only saves a bit of length and invites a lot more risk of uneven settling – November 9/17</p> <p>The Northwestern Health Unit is ok with the proposed consent but not as proposed. The diagram picture below that is taken from the application form shows the proposed new property line to be 7 metres from the existing corner of the home.</p>

	<p>The Northwestern Health Unit has been discussing this item with the Tresors and they are aware that this line needs to move to accommodate the new septic system that is concurrently being installed to allow the renovation to the home. The proposed new septic system extends quite some distance down in this area, but is still well behind the 30 metre setback to the water. We are ok with some form of conditional consent that leaves this item open to be resolved.</p>  <p>A new septic system was installed for the new home on the other property that the portion of this lot is being added to so the health unit is ok with the other property getting larger as a result of this application.</p> <p>The only item to resolve is how to establish a new property line to allow the new proposed septic to not be too close to the new line - November 8/17</p>
Ministry of Natural Resources	No concerns – November 6/17

7. Public Comments

Circulation of the Notice of Complete Application and Hearing was completed in accordance with Sections 53 of the Planning Act; whereby it was circulated to property owners within 60 metres of the subject property on October 26th, 2017, and provided to the persons and public bodies prescribed.

A public hearing is scheduled to be held on November 21st, 2017, to hear public comments. If new information or comments are provided at the meeting, additional information may affect the outcome of the recommendation presented.

As of the date of this report, no public comments have been received.

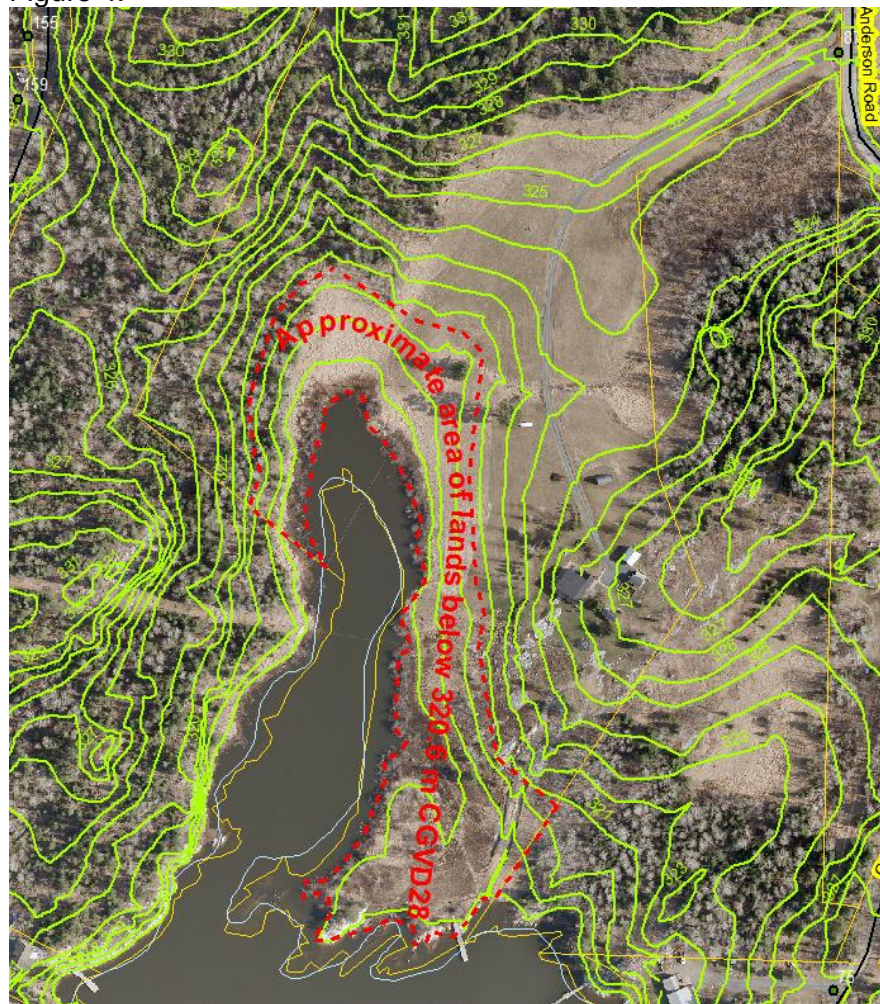
8. Evaluation

If approved, the lot addition as proposed, would enable approximately 75% of an existing lot to be added to an adjacent property.

The property can be generally described irregular in shape, and very deep between the water and Anderson Road. The shoreline encompasses a bay over 270 metres in depth, with approximately 530 metres of frontage. Whereas 469 metres of this frontage is proposed to be transferred to the abutting lot, the existing parcel would retain only 61 metres of the original frontage.

Of this land to be added, approximately 2.25 hectares of it is deemed hazard land given that it is below the contour elevation of 320.6 metres CGVD28. Refer to the sketch below displaying contours.

Figure 4.



A concern of the lot layout as proposed, is that approximately 1.5 hectares of the shoreline area, would become inaccessible if added to the adjacent property. Since the lands are hazard, they will be compromised in that legal access to them is not assured.

If transferred, future owners and users of the abutting parcel will likely develop docks and other shoreline structures which would be located as much as 300 metres from the closest dwelling, on the northside of the bay.

Whereas hazard lands cannot be developed or build upon, the lands fronting the existing lot and dwelling, would not benefit the lands to which they are proposed to be added. In addition, it would be a very negative practice, to sell property fronting lot to another owner.

The Northwestern Health Unit requested that the applicant's revise their sketch in order to accommodate their comments, stating the proposed sewage system would be too close to lot lines, which would cause the lot line circling the shoreline to be further reduced.

The lands for lot addition will become over 23 hectares, and be eligible for subdivision. Without a more clear picture of the intended use of these hazard lands, which are contiguous with the retained lands, there is a high possibility for conflict between abutting land owners.

In conclusion, due to the layout and that this swath of hazard lands around the bay, are within the straight line projections from the road, it would appear to be more appropriate to leave them with the retained lot.

And finally, whereas it is recommended that the hazard land congruous with the retained lands is not severed, and approximately 350 metres of shoreline remains intact, there would be no need to grant a minor variance.

The application would then be consistent with objectives of the official plan and the zoning by-law; and the development would be appropriate and desirable development of the land, as per the four tests.

9. Legislative Framework for Consent approval

The Committee shall evaluate a consent application based on the Provincial Policy Statement (2014), The City of Kenora Official Plan (2015), Zoning By-law No. 101-2015 as amended and the provisions of section 51(24) of the Planning Act:

In determining whether a provisional consent is to be given, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to:

- (a) the effect of development of the proposed subdivision on matters of provincial interest;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act

10. Recommendation

That application D10-17-09 for lot addition located at 872 Anderson Road; legally described as CON 1M MAJOR PT N OF S PT LT;17 PT PCL 10539 INCL KR1802;PT 1 PT KR442 LESS PT 23R;8026,KR1241,KR1322 PT 1, be refused, until a lot layout is provided which demonstrates the long term provision for sewage servicing and cohesive integration of shoreline.

In the event that a layout is provided which accommodates the above recommendations, it is recommended that a provisional approval be subject to the following conditions:

- 1) The original executed Transfer/Deed of Land form, a duplicate original and one photocopy for City records be provided
- 2) A Schedule to the Transfer/Deed of land form on which is set out the entire legal description of the parcel(s) in question and containing the names of the parties indicated on page 1 of the Transfer/Deed of Land form be provided.
- 3) That the transferor and transferee not be the same person.
- 4) That an easement is registered in order to allow for hydro access as established over the retained lands, and that the Planning fee of \$100 is paid.
- 5) That the Northwestern Health Unit is satisfied with the lot layout to accommodate a sewage system.
- 6) That approvals are received from the City for the provision of any future entrance permits, culvert and materials as required to develop driveway access, where a new entrance is required.
- 7) Three original copies (not photocopies) of the reference plan of survey, bearing the Land Registry Office registration number and signatures as evidence of deposit therein, and illustrating the parcel(s) to which the consent approval relates an which must show in general the same area and dimensions as the sketch forming part of the application be provided.
- 8) That the payment of any outstanding taxes, including penalties and interest (and any local improvement charges if applicable) shall be paid to the City of Kenora.
- 9) That prior to endorsement of the deeds, the Secretary-Treasurer shall receive a letter, from the owner or owner's Agent/Solicitor, confirming that conditions #1 through #7 have been fulfilled. Clearance letters from the City of Kenora and external agencies are to be included.
- 10) That all costs associated with extension of services, driveway installation, surveys, legal fees and matters related to the application are the responsibility of the developer/applicant.

NOTES:

Prior to any grading or any construction on the site, the Developer may be requested to provide a Drainage Plan, to identify the capacity of the existing natural swales and/or proposed ditches, and demonstrate that the drainage for all roads and lots be as close to the property lines as possible. References would be made to an overall drainage basin runoff flow calculation

The following section(s) of the Planning Act apply:

Conditions not fulfilled

53(41) If conditions have been imposed and the applicant has not, within a period of one year after notice was given under subsection (17) or (24), whichever is later, fulfilled the conditions, the application for consent shall be deemed to be refused but, if there is an appeal under

subsection (14), (19) or (27), the application for consent shall not be deemed to be refused for failure to fulfill the conditions until the expiry of one year from the date of the order of the Municipal Board issued in respect of the appeal or from the date of a notice issued by the Board under subsection (29) or (33). 1994, c. 23, s. 32.

Lapse of consent

53 (43) A consent given under this section lapses at the expiration of two years from the date of the certificate given under subsection (42) if the transaction in respect of which the consent was given is not carried out within the two-year period, but the council or the Minister in giving the consent may provide for an earlier lapsing of the consent. 1994, c. 23, s. 32.

A handwritten signature in black ink, appearing to read "Devon McCloskey". The signature is fluid and cursive, with the first name "Devon" written in a larger, more prominent script than the last name "McCloskey".

Devon McCloskey, RPP, MCIP
City Planner

Attachments

- Complete Applications for Minor Variance and Consent to Sever
- Notice of Applications and Public Meeting
- Reference Plan 23R-10898