

Case No.: PL190146

PROCEEDING COMMENCED UNDER (Subsections 34(19), (19.01) and (19.02) and Tribunal Rules 26.05, 26.08, 26.09 and 10)

Applicant(s):	TCG Lake Ventures Corp.
Appellant(s):	Northshore Ridge Condominium Corporation
Subject:	Appeal of City of Kenora ZBLA BL 41-2019
Property Address/Description:	Area of 543 Lakeview Drive
Municipality:	City of Kenora
LPAT Case No.:	PL190146
LPAT File No.:	PL190146
LPAT Case Name:	LPAT Verification Appeal

NOTICE OF RESPONSE TO MOTION
Response of The Corporation of the City of Kenora
June 18, 2019

McKitricks
Barristers and Solicitors
17A Cumberland Street South
Thunder Bay, ON P7B 2T3
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Allan G. McKitrick, Q.C.
LSUC # 09711T
Counsel for The Corporation
Of the City of Kenora

To James L. Cook, President
Northshore Ridge Condominium Corporation #2
6-35 Nash Street
Kenora, Ontario P9N 3V3

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Tab 1

Local Planning Appeal Tribunal
NOTICE OF RESPONSE TO MOTION

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RESPONSE OF THE CORPORATION OF THE CITY OF KENORA

RELIEF SOUGHT:

1. An Order dismissing the Motion of Northshore Ridge Condominium Corporation #2 and confirming the Decision of the Tribunal dated May 13, 2019 which found that the Notice of Appeal filed in this matter is not valid as it fails to provide an explanation for the Appeal in accordance with the legislative requirements set out in Subsection (19.02) of the *Planning Act*.

Issue

2. The issue is whether the Notice of Appeal is compliant with Section (19.02). The issue is to be determined by an examination of the Notice of Appeal.
3. The issue is not to be determined by reference to the entire Record or based on extraneous documents, submissions and other material.

THE GROUNDS FOR THE RELIEF REQUESTED:

4. The Moving Party provides the Notice of Motion (pages 2 and 3), an Affidavit of James L. Cook, (Pages 4 and 5) an extract from the Official Plan which includes Section 3.15, the only Section referred to in the Notice of Appeal, (pages 10-12) the Notice of Appeal (page 17) and 68 pages of irrelevant, extraneous material.
5. It is submitted that this bulk of material was filed to attempt to explain the basis for the Appeal because the Notice of Appeal did not do so.
6. In his Affidavit, sworn before Legal Counsel and after obtaining an unsworn Planner's Report, James L. Cook states that the Grounds for the Motion are that the amendment to the By-law is not in conformity with Official Plan Policy 3.15.5 and Policy 3.13.3 (not mentioned in the Notice of Appeal) but does not include as a Ground compliance of the Notice of Appeal with Section 34(19.02) of the *Act*.

Statutory Requirements/Provisions

7. Under Subsection 34(19.01) of the *Planning Act* ("the Act") an appeal of a zoning by-law may only be made

"on the basis that the by-law is inconsistent with a policy statement issued under Subsection 3(1), fails to conform with or conflicts with a provincial plan or fails to conform with applicable official plan".

8. In the within matter, the only relevant senior document is the Official Plan. Subsection 34(19.02) of the Act provides that

"A Notice of Appeal under Subsection (19) shall explain how the by-law.....fails to conform with an applicable Official Plan."

Subsection 34(19) provides that a Notice of Appeal must be made

"not later than 20 days after the day that the giving of Notice (of passing) is completed."

The Act does not provide for extending the time for making the appeal. The Notice of Appeal is what was filed within the prescribed period and nothing else. The mandatory appeal period cannot be extended by filing supplementary documents months after the appeal period has expired.

9. Under Rule 26.05 the Tribunal

“shall, within 10 days of the Registrar’s acknowledgement of receipt of the Notice of Appeal undertake a screening to make a preliminary determination of the validity of the Notice of Appeal”

10. This process is intended to end the days when significant projects could be delayed or lost based on perfunctory or non-compliant appeals such as the one page document at issue here.

11. Under Rules 26.06 to 26.08 the process for appealing the ruling is set out and under Rule 26.09 a finding that the appeal is not valid results in its dismissal, otherwise it proceeds.

12. To quote the Ministry’s summary of the Building Better Communities and *Conserving Watersheds Act*, 2017:

“Onus is on appellant to set out reasons why council decision is inconsistent/does not conform with provincial policy and /or applicable Official Plans.”

The Notice of Appeal

13. The Notice incorrectly states that relief is provided from setback requirements for "all abutting property lines, including the height". In fact no such relief is requested for Area B and, in the case of Area C, the relief relates only to the rear setback and setback from water and the permitted height is reduced from that now permitted.
14. The Notice further misdescribes the proposed permitted use as 35 "new residential units", whereas the amendment is for a "Resort", not a residential development. A resort is defined in Kenora Zoning By-law 101-2015 as:

"Resort

A tourist establishment that provides accommodation throughout all or part of the year and that may or may not have facilities for serving meals and furnishes equipment, supplies or services to persons in connection with angling, hunting, camping or recreational purposes, and which may also include accommodation facilities for staff."

15. The Section of the Official Plan referred to is Section 3.15.5. A copy of the full text of Section 3.15 is attached. The Notice of Appeal does not analyze the Section. One cannot determine what provisions of the Section are unfulfilled. There is no "explanation".
16. The Notice of Appeal appears to presume that simply because of the alleged reduction in setbacks and the relief on the height requirement for Parcel A, there is therefore a failure to conform with Section 3.15.

17. In fact, the first paragraph of Section 3.15 states that:

"Wherever a change in land use is proposed, consideration shall be given to the effect of the proposed use on existing land uses. Where there are potential compatibility concerns, consideration shall be given to the extent to which increased site plan requirements can reduce the potential impacts."

The Municipality fully intends to impose such site plan requirements as appropriate.

18. Under the first paragraph of Subsection 3.15.5, (the one specifically referred to by the Appellant), the following statement appears.

"Compatibility can be achieved in a variety of ways, including the provision of appropriate setbacks, buffering features, and transition in building height and massing."

There then follows a list of criteria for consideration in relation to zoning amendments.

These are matters to be taken into account in the planning process, and they have been. They are not fixed, quantitative requirements which must be met to achieve conformity with the Official Plan.

19. It is submitted that the Act was amended to limit appeals to real issues of conformity with the planning and public policy principles embraced by the applicable official plan.

Appeals are not authorized or intended to be based on the minute details of development such as the yard and height regulations. Those are purely local matters for the City Council or the Committee of Adjustment as the case may be.

If such details could be accepted as a basis for appeals, the purpose of the amendments to the Act would be defeated. Entitlement to appeal would again be unrestricted. Important projects could be thwarted by unspecific letters.

20. The questions to be asked in relation to the Notice of Appeal are – “On its face, is it based on one of the permitted grounds and secondly, does it ‘explain how the by-law is inconsistent’ with one of the aforementioned planning documents as required by Subsection 34(19.02) of the Act? How is it that the proposed development cannot be in conformity with the Official Plan?”
21. The Notice of Appeal does not meet these tests. Even if the criteria referred to in Subsection 3.15.5 had been analyzed, there is no statement in the Notice of Appeal specifically demonstrating how the by-law fails to conform thereto and how that results in non-conformity with the official plan in the sense intended by Subsections 34(19.01) and (19.02) of the Act.

Stated Basis of Appeal

Reason #1 –Subparagraph (i) of Notice of Appeal

22. In order to comply with the requirements of Subsection 34(19.02), the Notice of Appeal must show not only that the requirements of the Kenora Zoning By-law are being amended but also:

(a) Specifically how an identified requirement of the Official Plan is not met;

(b) Specifically what properties are involved with compatibility issues;

(c) Specifically what are the compatibility issues with those properties;\

(d) Why compatibility cannot be achieved using the Planning tools outlined in Section 3.15 and 3.15.5, ie site plan requirements, setbacks, buffering features and transition in building height and massing.

23. Section 3.15 does not set out absolute and objective requirements. It is a decision for the local council to determine acceptable levels of impacts. The Official Plan lays out tools that may be used in making those decisions.

24. Simply put the Notice of Appeal does not explain how the zoning amendment does not conform to the Official Plan.

Reason #2 – Subparagraph (ii) of Notice of Appeal

25. The second position stated as the basis for the appeal is that

“The proposed zoning makes no provision for the creation of 35 new residential units. Multi-Unit Residential zoning is required as a permitted use in the proposed Tourist Recreational Zone.”

26. The following responds to that statement.

(a) In fact, this statement is correct. Residential use is not permitted in the proposed amendment nor in the Tourist Recreational Zone.

(b) The proposed use is as a Resort. Not Multi-Unit Residential. This stated basis for the Appeal is both clearly mistaken and has no bearing on Official Plan conformity.

Summary of Reasons– Second Paragraph Notice of Appeal

27. The summary of the basis for the appeal is that a 35 unit Residential development (which would not be authorized) is not appropriate. The alleged inappropriateness of the yard and height requirements relate to a type of development that is not contemplated. The summary establishes that the real aim of the Notice of Appeal is to prevent a Multi Residential development which is not proposed and this is an objective which does not relate to Official Plan conformity.

The Planning Letter Filed

28. Included in the material filed in this Motion is a letter from JCP Planning Development ("JCP"). This letter is dated May 2, 2019 and is addressed to the Tribunal. It is not in the form of a sworn Affidavit.
29. The letter was not provided to Counsel for the Municipality until the within Motion documents were served on June 13, 2019.
30. It is submitted that the letter is irrelevant to the within Motion since it is an attempt to expand on the Notice of Appeal. The Notice of Appeal is the one page letter of April 8, 2019. The time for filing a Notice of Appeal expired months ago and the JCP letter cannot constitute an additional Notice of Appeal or an addendum to the original one, so it has no status.
31. For the record, however, the following observations are submitted:
 - (a) The amendment provides for a decrease, not an increase in the permitted height for Parcel C.
 - (b) The analysis does not relate the proposed setbacks to the existing ones in the Highway Commercial Zone, for example the existing 50% lot coverage requirement vs the stricter 44% requirement in the By-law nor consider developments currently permitted on the property such as hotels and motels.

- (c) The permitted use is mis-characterized as for residential units as opposed to a Resort as defined in the Zoning By-law.
- (d) Like the Notice of Appeal itself, it does not provide specifically as to how the By-law fails to conform with the Official Plan and how planning tools cannot be used to reduce specific impacts on specific properties.
- (e) Neither the Notice of Appeal nor the letter identify impacted properties specifically nor mention, for example that the property of the Appellant does not abut any lot line of the Resort property where a setback has been relaxed, nor that the reduction in the maximum height for Parcel C results in an improved view of the Lake from the Appellant property compared to what is currently permitted.
- (f) The statements regarding the processing of the Applications for the rezoning do not reflect the fair and thorough consultative process undertaken by the Municipality. This is not a stated basis for the Appeal but the Municipality is concerned that the statements are made and is prepared to provide detailed information on the process adopted if required.
- (g) Importantly, the letter does not analyze the Notice of Appeal itself in terms of meeting the requirements of Subsection 34(19.02) of the *Act*.

Further Grounds

32. Such further grounds as Counsel may advise and this Honorable Tribunal may deem just.

THE FOLLOWING DOCUMENTARY EVIDENCE is provided for purposes of Response to the Notice of Appeal.

- a. By-law 41-2019;
- b. Section 3.15.5 of Kenora Official Plan;
- c. Notice of Appeal;
- d. Tribunal Decision May 13, 2019;
- e. Acknowledgement of Expert Duty;
- f. Affidavit of Devon McCloskey, City Planner.

Date: June 18, 2019

McKitricks
Barristers and Solicitors
17A Cumberland Street South
Thunder Bay, ON P7B 2T3
Tel: (807) 345-1251
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Allan G. McKitrick, Q.C.
LSUC # 09711T
Lawyer for The City of Kenora

To: James Cook, President
Northshore Ridge Condominium Corporation
7-35 Nash St.
Kenora, ON P9N 3V3

Tab 2

The Corporation of the City of Kenora

By Law Number 41 - 2019

A By-law to Amend Comprehensive Zoning By-law 101-2015

Whereas the Council of the Corporation of the City of Kenora passed Comprehensive Zoning By-law No. 101-2015 on December 15, 2015; and

Whereas Council has amended By-Law 101-2015 from time to time; and

Whereas it is deemed advisable and expedient to further amend By-Law 101-2015;

Now therefore the Council of the City of Kenora Enacts as follows:

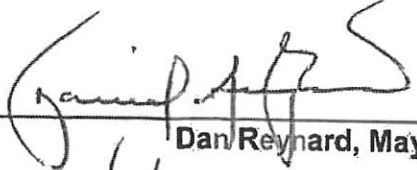
That Schedule "A", attached to and forming part of By-Law 101-2015, is hereby amended by changing the zoning of property located at:

1. Area A known as the 'Anchor Inn' at 543 Lakeview Drive, Area B at 49 Nash Drive, and Area C at the southside of Nash Street; described as being Block 3, Plan 3, Part of Lot 1 to 3, Part Main Street, RP 23R-12204 Parts 3 to 7
2. That this By-law will cause the zoning of property as identified to be changed from Highway Commercial (HC) to Tourist Recreational (TR-42) to allow for development of uses permitted within the TR zone, including a Resort, and enable site specific provisions:
 - a) Area 'A', to reduce the eastside yard setback to allow a narrowing from 4.5 m to 1.6 m, reduce the westside yard setback to 2.4 m, reduce the front yard setback to 6 m, reduce the rear yard to 4.5 m, increase building height to enable a variable terraced design to 15 m;
 - b) Area 'C', to allow for a two storey Club House and Administration Office with two resort units, not to exceed 7m in height, to reduce the setback from water to 6 m, to reduce the rear setback to 4.5m
 - c) To increase the lot coverage for the overall development to 44%.
3. That Schedule "A" attached hereto is hereby made part of this By-Law, fully and to all intents and purposes as though cited in full herein.
4. That this By-Law shall come into force as provided in the Planning Act c. 13, R.S.O. 1990, as amended, and thereupon shall be effective from the date of its final passing.

By-law read a first and second time this 19th day of March, 2019

By-law read a third and final time this 19th day of March, 2019

The Corporation of the City of Kenora:-



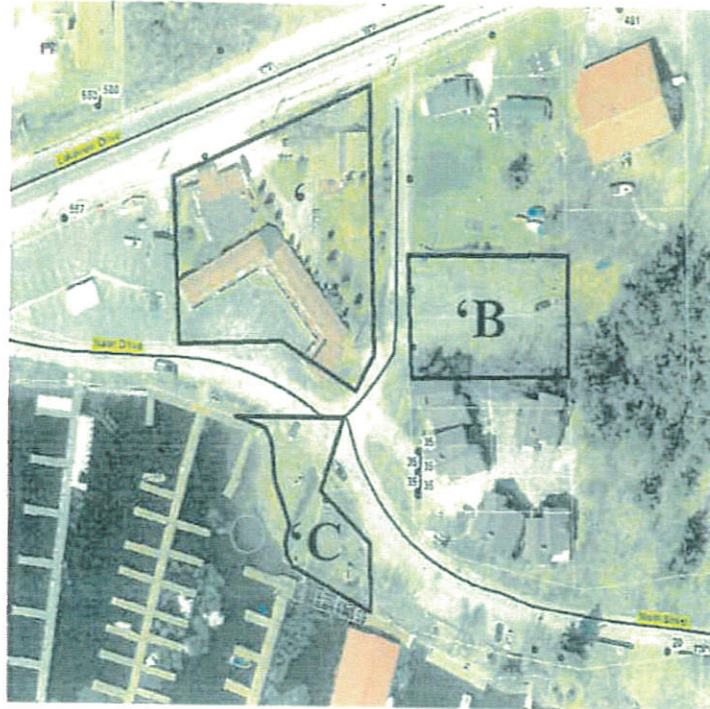
Dan Reynard, Mayor



Heather Pihulak, City Clerk

City of Kenora By-law No. 41 - 2019, amending By-law 101-2015
Schedule "A"

**Location Sketch
(2014 Aerial Imagery)**



1. Area A known as the 'Anchor Inn' at 543 Lakeview Drive, Area B at 49 Nash Drive, and Area C at the southside of Nash Street; described as being Block 3, Plan 3, Part of Lot 1 to 3, Part Main Street, RP 23R-12204 Parts 3 to 7
2. That this By-law will cause the zoning of property as identified to be changed from Highway Commercial (HC) to Tourist Recreational (TR-42) to allow for development of uses permitted within the TR zone, including a Resort and the following site specific provisions;
 - a. Area 'A', to reduce the eastside yard setback to allow a narrowing from 4.5 m to 1.6 m, reduce the westside yard setback to 2.4 m, reduce the front yard setback to 6 m, reduce the rear yard to 4.5 m, increase building height to enable a variable terraced design to 15 m;
 - b. Area 'C', to allow for a two storey Club House and Administration Office with two resort units, not to exceed 7m in height, to reduce the setback from water to 6 m, to reduce the rear setback to 4.5m
 - c. To increase the lot coverage for the overall development to 44%.

Mayor

City Clerk

Tab 3

Class III Industries: 300 m

In the absence of technical studies, which identify an actual influence area, separation distances required between industrial uses and residential or other sensitive land uses shall reflect the following potential influence areas:

Class I Industries: 70 m

Class II Industries: 300 m

Class III Industries: 1,000 m

Proponents may be required to provide buffering measures such as landscaping, plantings, and fencing to minimize the impact of the industrial activity, including visual appearance.

3.15.3 Waste Disposal Sites and Sensitive Land Uses

Any development proposed within 500 metres of a current or former waste disposal site or other waste management system may require the submission of technical studies, to the satisfaction of Council, to establish the potential hazards, adverse effects, or health and safety risks that may result from these facilities. The required technical studies shall also provide recommendations regarding the appropriate mitigation measures, including setbacks, development standards, monitoring requirements, or other remedial measures to prevent adverse effects and minimize risk to public health and safety. Compatibility will be further assessed in accordance with the Waste Disposal Site policies of this Plan and MOECC Guideline D-4: Land Use on or Near Landfills and Dumps.

3.15.4 Sewage Treatment Plants and Sensitive Land Uses

A minimum separation distance of 150 metres is recommended where residential or other sensitive land uses are proposed in proximity to a municipal sewage treatment plant. Compatibility will be further assessed in accordance with MOECC Guideline D-2: Compatibility Between Sewage Treatment and Sensitive Land Uses.

3.15.5 Compatibility Criteria

Compatible development means development that, although it is not necessarily the same as or similar to existing buildings in the vicinity, nonetheless enhances an established community and coexists with existing development without causing undue adverse impact on surrounding properties. Compatibility can be achieved in a variety of ways, including the provision of appropriate setbacks, buffering features, and transition in building height and massing.

Compatibility of new developments shall be assessed based on the following criteria:

- a) **Height and massing:** new buildings must have regards to the height and massing of adjacent buildings. Where variation in height or massing is proposed, a transition is desirable.
- b) **Pattern of surrounding community:** proposed developments must consider the character of the surrounding buildings, including scale and rhythm, massing, and architectural design;
- c) **Outdoor amenity areas:** the privacy of outdoor amenity areas of adjacent residential units must be respected;

- d) **Shadowing:** shadowing on adjacent properties must be minimized, particularly on outdoor amenity areas;
- e) **Lighting:** the potential for light spill-over or glare onto adjacent light-sensitive areas must be minimized;
- f) **Noise and air quality:** the development should be located and designed to minimize the potential for significant adverse impacts on adjacent sensitive uses related to noise, odours, and other emissions.
- g) **Parking:** adequate on-site parking must be provided, with minimal impact on adjacent uses;
- h) **Loading and service areas:** the operational characteristics and visual appearance of loading and services areas (including garbage and outdoor storage areas) must be designed to mitigate adverse effects on adjacent properties and should be located away from residential uses, where possible; and
- i) **Vehicular access:** the location and orientation of vehicular access must take into account impact on adjacent properties including noise, glare and loss of privacy.

3.16 Laneway Housing

Laneway housing refers to small, detached dwellings constructed along public lanes at the rear of developed lots. These units are secondary to a primary detached dwelling on the same lot, and gain access only from the public lane at the rear. Laneway housing may also refer to dwelling units located above garages accessed from public lanes.

Public lanes are of limited width and are not designed to handle significant vehicular or pedestrian traffic. Additionally, maintenance, waste collection, and snow removal is difficult in narrow lanes, presenting potential hazards or inconveniences to users. Further development along public lanes can exasperate these challenges and increase strain on infrastructure.

The following policies apply to laneway housing in Kenora:

- a) Development of new laneway housing is prohibited.
- b) Where laneway housing already exists, such as in Keewatin and Lakeside, these dwellings will be considered non-conforming and are subject to the provisions established in the Zoning By-law.

3.17 Residential Densities

Density is a relative term that is used to define the scale and grain of development. It is typically a measure of persons or dwelling units per unit of land area. Net residential density is usually expressed as the number of dwelling units per hectare and measures the area of land used exclusively for residential use, including private roads and parking areas but excluding public streets, rights-of-way, parks, environmental areas and non-residential uses.

Tab 4

Northshore Ridge Condominium Corporation
(Kenora Condominium Corporation #2)

35 Nash St. Unit 5. Kenora, ON. P9N 3V3

April 8th, 2019

City of Kenora
Office of the City Clerk
One Main St. South
Kenora, ON
P9N 3X2

Attn: Heather Pihulak, City Clerk

Re: NOTICE OF APPEAL: Zoning By-Law Amendment File No. D14-19-02 (Anchor Inn)

Dear Ms. Pihulak:

Further to the Notice of Decision of zoning by-law amendment 41-2019 (Planning File# D14-19-02), the Northshore Ridge Condominium Corporation hereby appeals Council's decision for the following reasons:

- (i) The request for relief from set-back requirements on all abutting property lines, including the height, clearly indicates density of the proposed development exceeds the intent of the Tourist Recreational zone. This application fails the compatibility tests set out in Section 3.15.5 - **Compatibility Criteria**, and is not in conformity with the City of Kenora Official Plan. The height and massing are out of scale for the area, the proposed development is out of character with the surrounding neighbourhood and it is lacking in outdoor amenity areas for a development of this size.
- (ii) The proposed zoning makes no provision for the creation of 35 new residential units. Multi-Unit Residential zoning is required as a permitted use, and this is not a permitted use in the proposed Tourist Recreational Zone.

In summary, this application to amend the zoning by-law to permit a thirty-five unit (35) unit residential development is not desirable and appropriate, given the proposed density, and lack of buffering and amenities between higher density and lower density residential areas.

Thank you for the opportunity to submit this appeal.

Respectfully:



Linda Delamere
Northshore Ridge Condominium Corporation
(Kenora Condominium Corporation #2)

Tab 5

**Environment and Land Tribunals
Ontario**

Local Planning Appeal Tribunal

655 Bay Street, Suite 1500
Toronto ON M5G 1E5
Telephone: (416) 212-6349
Toll Free: 1-866-448-2248
Website: www.elto.gov.on.ca

**Tribunaux de l'environnement et de
l'aménagement du territoire Ontario**

Tribunal d'appel de l'aménagement
local

655 rue Bay, suite 1500
Toronto ON M5G 1E5
Téléphone: (416) 212-6349
Sans Frais: 1-866-448-2248
Site Web: www.elto.gov.on.ca



May 13, 2019

Via Purolator and Email

James Cook
President
Northshore Ridge Condominium Corporation
7-35 Nash St.
Kenora, ON P9N 3V3

Subject:	Case Number:	PL190146
	File Number:	PL190146
	Municipality:	Kenora
	By-Law Number:	BL 41-2019
	Property Location:	Area of 543 Lakeview Drive
	Applicant(s):	TCG Lake Ventures Corp.
	Appellant(s):	Northshore Ridge Condominium Corporation

Re: Preliminary Screening of the Notice of Appeal

This letter is to advise that the Tribunal has now completed its preliminary screening of your notice of appeal in accordance with Rule 26.05 of the Tribunal's Rules of Practice and Procedure "(Rules)". The Tribunal has made a preliminary determination that this notice of appeal is **not valid** as it fails to provide an explanation for the appeal in accordance with the legislative requirements set out in section 34(19.0.2) of the *Planning Act*.

Dispute as to a Not Valid Appeal

Should you wish to challenge this preliminary determination that your notice of appeal does not provide an explanation of the statutory tests set out in the *Planning Act*, Rule 26.08 requires you to make a written motion to the Tribunal **within 15 days of the date of this letter, which is Friday, May 28, 2019**. Motion materials must be prepared in hard copy and electronically, in accordance with Rule 7 and Rule 10, and filed with the Tribunal Case Coordinator, **Ben Bath** at **Ben.Bath@ontario.ca**. The materials should explain how or why your notice of appeal satisfies the statutory tests.

If you make a written motion to the Tribunal challenging this preliminary determination, the Tribunal will schedule either a written or oral motion. The municipality, the approval authority and any other appellants must be provided with a copy of your motion materials and will be provided the opportunity to respond to your motion.

Please find attached a copy of Rule 7, Rule 10 and Rules 26.01 to 26.10 inclusive. A sample form for a 'Notice of Motion' is available on the Tribunal's website.

The Tribunal will close its file in the event that you do not make a written motion to the Tribunal within 15 days of the date of this letter to challenge the preliminary determination that your appeal is not valid.

We are committed to providing accessible services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible by emailing ELTO@ontario.ca. If you require documents in formats other than conventional print, or if you have specific accommodation needs, please let us know so we can make arrangements in advance.

For general information concerning the Tribunal's policies and procedures visit our website at www.elto.gov.on.ca or you may contact the Tribunal's offices at (416) 212-6349.

Yours truly,

Mary Ann Hunwicks
Registrar

c.c.

TCG Lake Ventures Corporation, mchia@tpi.ca
City of Kenora C/O Allan G. McKintrick, mckits@tbaytel.net
The Clerk, City of Kenora, hkasprick@kenora.ca

encl: Rule 7, Rule 10 and Rules 26.01 to 26.10

LOCAL PLANNING APPEAL TRIBUNAL RULES ON DOCUMENTS, EXHIBITS, FILING AND SERVICE

7.01 Form of Documents Unless otherwise directed by the Tribunal, every document filed or introduced by a party or participant in a proceeding shall be legible and prepared on letter size paper (8 ½" x 11"), except for large documents such as plans or surveys, and, where bound together with other documents, shall have each page numbered consecutively, throughout the entire text or within tabs, including any graphic content. Wherever possible, an electronic copy of the document must also be filed with the Tribunal, identically numbered as the paper document.

April 3, 2018

LOCAL PLANNING APPEAL TRIBUNAL RULES ON MOTIONS

10.01 Notice of Motion A motion brought before the commencement of a hearing event shall be made by notice of motion.

10.02 Date for Motion A moving party shall obtain from Tribunal staff a motion date if the motion is to be heard in person or by electronic hearing. A person may request, or the Tribunal may order, that the motion be heard in person or by electronic hearing.

10.03 Motion in Writing A party bringing a motion before the commencement of a hearing event may request a motion be held in writing, or the Tribunal may make its own determination that the motion be held in writing, in which case the Tribunal will notify the moving party and all other parties. The moving party shall serve a notice of written motion within 15 days of receipt of this notice. Parties wishing to respond to a written motion shall serve a response within 7 days of the date of the moving party's notice of written motion. A moving party may reply to a response within 3 days of the date of the written response.

10.04 Content of Motion Material The notice of motion to be heard orally, by electronic hearing, or in writing shall:

- (a) state the day, time and location of the hearing of the motion;
- (a) state the precise relief sought;
- (b) state the grounds to be argued, including a reference to any statutory provision or rule to be relied on;
- (c) list the documentary evidence to be used at the hearing of the motion;
- (d) be accompanied by an affidavit setting out a brief and clear statement of the facts upon which the moving party will rely; and
- (e) state the names and addresses of the responding parties or their representatives and all persons to whom the notice of motion is to be given.

10.05 Service of the Notice of Motion A notice of motion and all supporting material, as set out in Rule 10.04, shall be served at least 15 days before the date of the motion to be held in person or by electronic hearing unless the Tribunal orders otherwise. A notice of motion shall be served on all parties, on any other person as directed by the Tribunal, and on the Registrar. An affidavit of service shall be filed with the Tribunal prior to or at the hearing of the motion.

10.06 The Notice of Response to Motion A responding party shall serve a notice of response that:

- (a) states the response to be made, including a reference to any statutory provision or rule to be relied on;
- (a) lists the documentary evidence to be used at the hearing of the motion; and
- (b) includes an affidavit setting out a brief and clear statement of the facts upon which the responding party will rely.

10.07 Service of the Notice of Response to Motion The notice of response to motion and all supporting material as set out in Rule 10.06 shall be served no later than 7 days before the date of the motion to be held in person or by electronic hearing unless the Tribunal orders otherwise. The notice of response shall be served on all parties, on any other person as directed by the Tribunal, and on the Registrar. An affidavit of service shall be filed with the Tribunal prior to or at the hearing of the motion.

10.08 Reply Submission A moving party may serve a reply submission, 3 days prior to the commencement of the hearing of the motion.

10.09 Oral Submissions All the parties to a motion which is heard in person or by electronic hearing may make oral submissions.

10.10 Motions Made at Oral Hearing Events A motion may be made at an oral hearing event with leave of and in accordance with any procedures ordered by the presiding Member.

10.11 Tribunal May Initiate a Motion The Tribunal may, at any time in a proceeding, initiate a motion to inquire into any matter or question of law in relation to its jurisdiction, and may determine the parties to that motion and issue directions necessary to inquire into the matter.

April 3, 2018

LOCAL PLANNING APPEAL TRIBUNAL RULES ON INITIATING PROCEEDINGS UNDER SUBSECTIONS 17(24), (36) AND (40), 22 (7), 34(11) AND (19) AND 51(34) OF THE PLANNING ACT

26.01 Application This Rule applies to appeals initiated under any of subsections 17(24), (36) and (40), 22(7), 34(11) and (19) and 51(34) of the *Planning Act* of a decision made by a municipality or approval authority or with respect to the failure of a municipality or approval authority to make a decision under these provisions. The Rules in Part I also apply to these proceedings, unless stated otherwise in Part II that a specific rule is not applicable or when otherwise directed by the Tribunal that a certain rule is not applicable in that proceeding.

26.02 Rules not Applicable The following Rules in Part I are not applicable to proceedings identified as appeals to the Tribunal authorized under subsection 17 (24), (36) and (40), 22 (7), 34 (11) and (19) and 51 (34) of the *Planning Act* **save and except** where there is an appeal that arises after the municipality or approval authority was given an opportunity to make a new decision (pursuant to subsection 17 (24) and (36), 22 (7), 34 (11) and (19) of the *Planning Act*) following the Order of the Tribunal to remit the matter to the municipality:

- Rule 6.04
- Rule 7.04
- Rule 8.01(e)
- Rule 9
- Rule 13.01(a) to (g), inclusive
- Rule 19

26.03 Additional Definitions The following definitions are applicable to proceedings under Part II:

“appeal record” or “responding appeal record” are those records described in Rule 26 that shall include, as a minimum, a supporting case synopsis;

“case management conference” is a hearing event which is directed by the Tribunal in an appeal initiated pursuant to and authorized by subsections 17(24), 17(36) and 17(40), 22(7), 34(11), 34(19) and 51(34) of the *Planning Act*;

“certificate of service” is the form approved by the Tribunal that must be submitted at least 30 days before the date of the case management conference by a person other than an Appellant, municipality or approval authority who wishes to participate in an appeal under subsections 17(24), 17(36), 17(40), 22(7), 34(11), 34(19) or 51(34) of the *Planning Act*;

“new decision” means the disposition of the municipality or the approval authority in respect of an appeal authorized under subsection 17(24), 17(36), 22(7), 34(11) and 34(19) of the *Planning Act* for which the municipality or approval authority was provided an opportunity to reconsider its decision or non-decision following a hearing by the Tribunal and Order to remit the matter to the municipality;

“interrogatory procedure” means the procedure approved by the Tribunal that directs a party to request in writing that another party to the proceeding provide written

information or supporting documentation following a case management conference and prior to the hearing of the appeal; and,

“validation” or “validity of the notice of appeal” means the preliminary screening exercise to determine whether or not the content in the notice of appeal filed in the intended proceeding provides an explanation of the appeal pursuant to subsections 17(25), 17(37), 17(41), 22(8), 34 (11.0.0.04), 34(19.0.2) and 51(34) of the *Planning Act*.

26.04 Enhanced Municipal Record When an appeal is filed with the municipality or approval authority in a proceeding to which the rules of Part II apply, the municipality or approval authority shall prepare a municipal record as prescribed by regulation under the *Planning Act* and in accordance with Rule 5.04., and in addition to those requirements, shall organize the record of documents and materials in chronological order with a contents page(s) outlining the title or a concise description of each entry separated by tabs and capable of being copied and bound or secured in a binder(s). The municipality or approval authority shall provide a paper copy of the municipal record to the Tribunal, as well as one electronic copy (pursuant to Rule 7.01). The municipality or approval authority shall also provide one electronic copy to each person who has filed an appeal, and shall maintain one paper copy with the clerk of the municipality, which shall be available for inspection by any person or copied at a reasonable cost during business hours.

26.05 Preliminary Screening of the Notice of Appeal The Tribunal shall, within 10 days of the Registrar’s acknowledgement of receipt of a notice of appeal, undertake a screening to make a preliminary determination of the validity of the notice of appeal, and shall thereafter advise the person who filed the notice, and the municipality and the approval authority, of the result of this screening exercise.

26.06 Dispute as to a Valid Appeal Where the screening has made a preliminary determination that a notice of appeal is valid, the municipality, the approval authority or a party including a person whose application is the subject of the appeal, if they wish to challenge that preliminary determination, may request a date for a motion from the Tribunal, with notice to the Appellant, to set aside the validation of the notice of appeal and to seek an order to dismiss the appeal without a hearing. The requirements in Rule 10 will apply to the motion.

26.07 Tribunal Member May Initiate a Motion A Member may initiate a motion, at any time in a proceeding, and direct the municipality, approval authority or a party including a person whose application is the subject of the appeal, to file and exchange submissions necessary for the Tribunal to inquire into the matter of its jurisdiction over the matter raised in the notice of appeal.

26.08 Dispute as to a Not Valid Appeal Where the Tribunal has made a preliminary determination that an appeal is not valid, the Tribunal shall notify the person who filed the appeal. A person so notified may within 15 days make a written motion to the Tribunal under Rule 10, challenging the preliminary determination that an appeal is not valid and shall provide the motion materials to the municipality, approval authority and any other Appellants. The requirements in Rule 10 will apply to this motion.

26.09 The Effect of a Ruling under RULE 26.06, RULE 26.07 and RULE 26.08 In the event the Tribunal makes a determination that an appeal is not valid, the appeal is dismissed. In the event the Tribunal sets aside the preliminary determination and finds

that the appeal is valid, the appeal will proceed in accordance with the process outlined by these Rules.

26.10 Commencement of the Proceeding Where the disposition of an appeal is subject to a prescribed timeline, the commencement of the period to which the timeline applies shall be the date the Registrar advises the Appellant(s) the preliminary screening exercise has determined the appeal is valid.

April 3, 2018

Tab 6



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

ACKNOWLEDGMENT OF EXPERT'S DUTY

Case Number	Municipality
PL190146	City of Kenora

1. My name is.....Devon McCloskey
I live at theCity of Kenora
in the.....District of Kenora
in theProvince of Ontario
2. I have been engaged by or on behalf of THE CORPORATION OF THE CITY OF KENORA to provide evidence in relation to the above-noted LPAT proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - a. to provide opinion evidence that is fair, objective and non-partisan;
 - b. to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - c. to provide such additional assistance as the LPAT may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date June 18th, 2019

Devon McCloskey
Signature

Tab 7

Local Planning Appeal Tribunal

AFFIDAVIT

Case No. PL190146

PROCEEDING COMMENDED UNDER: (Subsections 34(19), (19.01) and (19.02) and Tribunal Rules 26.05, 26.08, 26.09 and 10)

Applicant(s)/Appellant(s):	TCG Lake Ventures Group
Subject	Northshore Ridge Condominium Corporation
Property Address/Description	Area of 543 Lakeview Drive
Municipality:	City of Kenora
Municipal File No.:	D 14-19-02 (By-Law BL 41-2019)
LPAT Case No.:	PL 190146
LPAT File No.:	PL 190146
LPAT Case Name:	LPAT Verification Appeal

AFFIDAVIT OF:

DEVON McCLOSKEY

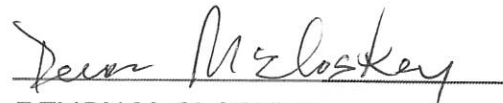
I, DEVON McCLOSKEY, of the City of Kenora, in the District of Kenora, make oath and say as follows:

1. I am the City Planner for the City of Kenora and have knowledge of the matters herein deposed to.
2. Exhibit "A" to this my Affidavit is a copy of my curriculum vita which correctly sets out my educational and professional background.

3. My duties include the administration of Official Plan and Zoning applications and proceedings, among them appeals to LPAT respecting Zoning By-law amendments.
4. I have had the responsibility for processing the Zoning By-law Amendment herein and am familiar with the background of it, the planning considerations involved and the public consultation undertaken.
5. I am satisfied that the process followed in relation to the By-law was fair and transparent and I am satisfied that the By-law conforms to the Official Plan.
6. In my opinion the zoning amendment is in conformity with the Official Plan.
7. I have read the Response to Motion material filed on behalf of the Municipality and I believe that the statements contained therein are correct.
8. I have read the Notice of Appeal herein dated April 8, 2019 and in my opinion it does not explain how the By-law fails to conform with the Kenora Official Plan.

9. I make this Affidavit for no improper purpose.

SWORN BEFORE ME at the City of Kenora)
in the Province of Ontario on this)
18th day of June 2019.)


DEVON McCLOSKEY)


Commissioner

KELLY GALBRAITH, a Commissioner of Oaths
District of Kenora, while DEPUTY CLERK for the
Corporation of the City of Kenora.

THIS IS EXHIBIT " A "REFERRED TO IN THE
AFFIDAVIT OF Devon J. McCloskey
SWORN BEFORE ME THIS 18th DAY
OF June, 2019

A handwritten signature in black ink, appearing to read "K. Galbraith", written over a horizontal blue line.

A Commissioner, etc.

KELLY GALBRAITH, a Commissioner of Oaths
District of Kenora, while DEPUTY CLERK for the
Corporation of the City of Kenora.

DEVON J. McCLOSKEY, MCIP, RPP

PROFESSIONAL EXPERIENCE

- accredited as a professional planner with the Canadian Institute of Planners and the Ontario Professional Planners Institute
- 13 years of professional planning experience, including with zoning by-law and official plan reviews, interpretation and analysis; planning policies; development approvals and projects; and natural resource management
- have appeared before various bodies and tribunals, including Municipal Councils and Committees, the Ontario Municipal Board and the Ontario Court of Justice

EDUCATION

- 1998 – 2003 Honours Bachelor of Environmental Studies (B.E.S) Faculty of Geography University of Waterloo, Ontario
- 2001 – 2003 Diploma of Environmental Assessment, University of Waterloo

EMPLOYMENT EXPERIENCE

2016 – Present

City Planner – City of Kenora, Ontario

- oversee all matters of planning for the Planning Division for the City of Kenora; supervise the Planning Analyst; and provide leadership to the Planning Advisory Committee
- prepare staff reports, by-laws and resolutions for Council and Committees
- advise the Manager of Community and Development Services and City Departments on all planning matters including policy update and development, interpretation and review
- conduct the processing, analysis and evaluation of development applications under the authority of the Planning Act, including amendments to the Official Plan and the Zoning By-law; approvals and agreements for subdivisions, condominiums, site plans, minor variance and consents
- work closely with the City's management team and the City's Economic Development, and Engineering Departments on long term joint initiatives, including initiatives involving downtown revitalization and redevelopment, housing and homelessness
- develop City policy under the authority of the Municipal Act such as Sale of Land

- co-supervised the update of the City's three Community Improvement Plans, which established new grants and opportunities for private sector redevelopment in established areas of the City including the following areas: Harbourfront, Keewatin and the Former Mill Site
- develop and negotiate contracts and agreements with developers, contractors, biologists and other professionals, including subdivision agreements, site plan agreements and undertakings to do work for the City
- develop and oversee the Planning Department's capital, special projects and operating budgets
- appointed as a Commissioner for swearing affidavits in respect of Planning Applications
- oversee all matters relating to the public process required to evaluate planning applications, including the management of the public record, timelines, public meetings, appeal provisions, writing and circulation of notices, by-laws and decisions
- proficient in the operation of software including MS Office, ESRI design and mapping products, independent databases including the Municipal Assessment Corporation's Municipal Connect, and Teranet's Geowarehouse
- advise the City's Enforcement section on matters of non-compliance as related to the Zoning By-law, works closely with the City's Prosecutor and Solicitor for matters requiring court appearance
- work closely with the Kenora District Services Board for development of the Emergency Shelter temporary and permanent location

2008 – 2016

Municipal Planner – Municipality of Red Lake, Red Lake, Ontario

- managed the Planning Department for the Municipality of Red Lake
- prepared reports and recommendations to Council, the Planning Advisory Committee and the Committee of Adjustment on all applications administered by the Municipality including matters related to: official plan amendments, zoning by-law amendments, subdivisions, site plan control, consents and minor variances
- advised Council, Departments and the public on all planning matters within the Municipality
- performed short-range and long-range planning for the Municipality, such as the development of policy and regulation through the Official Plan and the Zoning By-law
- provided key input on development of plans and studies, such as the Strategic Plan, Cultural Plan, Recreation Plan and the Sustainable Community Plan

- appointed as Commissioner for swearing affidavits in respect of Planning Applications
- appointed as Secretary-Treasurer for planning related committees
- responsible for all Planning Act matters relating to applications, including ensuring adherence to legislated timelines for notices and decisions and making legislated updates to the Official Plan and the Zoning By-law
- liaised with the public, First Nation band offices, Ministry officials, legal offices, Committee and Council members, on policy development, applications and agreements
- developed with the Chief Administrative Officer ("CAO") the annual operating and capital budgets for the department
- prepared Requests for Proposals for plans and studies
- worked collaboratively with consultants and legal advisors
- worked closely with internal municipal departments, including Operations, Economic Development, Treasury, Clerk's and the CAO's offices on day to day and long term matters, including matters involving business license reviews, public works projects, downtown revitalization, housing and homelessness
- assisted with compliance and enforcement of the Zoning By-Law, and other Municipal By-Laws related to land use planning

RELATED EMPLOYMENT EXPERIENCE AS RECOGNIZED BY ONTARIO PROFESSIONAL PLANNERS INSTITUTE ("OPPI")

2004/2006 – 2008

Technician – Ministry of Natural Resources, Red Lake, Ontario

- provided recommendations on Crown Land use and Crown Land sale applications that were received from all sectors including the public, the Province and the Municipality
- as a Public Lands Officer, implemented Provincial legislation, including the: Public Lands Act; Environmental Assessment Act; Environmental Bill of Rights; Crown Forest and Sustainability Act; Freedom of Information and Protection of Privacy Act; Mining Act; and the Lakes and Rivers Improvement Act
- presented land use proposals at public information centres

- liaised with First Nations, harvest companies, the public, and stakeholders regarding controversial issues in resource management planning
- planned and navigated aerial surveys
- collaborated with flight crew to collect spatial information as related to proposed forest harvest areas, sensitive values and moose harvests.
- independently responsible for responding to calls to the provincial bear hotline - resolved human-bear conflicts on a daily basis
- provided input about the fate and ecological state of area islands, as related to fire succession and caribou over 2 months
- published map products using Arc Map, Garmin GPS technology and advanced printing methods

2005 – 2006

Ontario Lands Management Intern – *Ministry of Natural Resources ("OMNR"), Red Lake*

- mentored by the District Lands and Waters Technical Specialist and Area Supervisors through a program to learn the provincial lands management program and the position of Senior Lands and Waters Technical Specialist
- independently conducted assignments and exceptional projects such as relocation of a contentious private recreation camp within a First Nation's Traditional Land Use Area
- worked on provincial lands, waters, and aggregate management programs
- trained to interpret policies, Land Registry instruments, surveys and legal documents

2004 – 2005

Planning Assistant – Woodland Caribou Provincial Park, Ontario Parks, Red Lake

- assisted with the preparation, writing and presentation of the Issues and Options phase of the Woodland Caribou Signature Site Management Plan, in accordance with the Provincial Parks Act, Environmental Assessment Act, and the Environmental Bill of Rights
- mapped First Nations' sensitive resource based values as related to significant heritage features and resources use using ArcView software

- initiated a research endeavor to locate and identify provincially and regionally significant vegetative species in relation to issues of campsite compatibility in nature reserves

PROFESIONAL AFFILIATIONS, COURSES, QUALIFICATIONS

- Full Member in good standing of the Canadian Institute of Professional Planners ("CIP") and the Ontario Professional Planners Institute ("OPPI")
- ACST (A) Associate Accredited Committee Secretary-Treasurer of the Ontario Association of Committees of Adjustment ("OACA")
- Northwest Municipal Services Office ("NW-MSO") of the Ministry of Municipal Affairs and Housing ("MMAH") Annual Planning Workshops 2009 – 17
- OACA Kingston 2015, Ottawa 2017
- Certificate of Completion for OACAs Primer on Planning Program, 2009
- MMAH Workshops including Subdivision and Condominium 2012
- Ministry of the Environment Workshop, Brownfields 2010
- Appraisal and Land Evaluation Training, Ontario Ministry of Natural Resources ("OMNR"), 2008
- Class Environmental Assessment conference and training, OMNR, 2005