

ISSUE DATE:

Oct. 06, 2008



PL080127

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

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

Appellant: John Wannop
Applicant: Richard Wannop
Subject: Consent
Property Address/Description: 98 Gill's Gully Lane
Municipality: Township of North Kawartha
OMB Case No.: PL080127
OMB File No.: PL080127
Municipal No.: B105-07

APPEARANCES:

Parties

John Wannop
Richard Wannop

Counsel

Richard Taylor
John Ewart

**MEMORANDUM OF ORAL DECISION DELIVERED BY S. J. SUTHERLAND
ON SEPTEMBER 29, 2008**

In December, 2007 the Land Division Committee of the County of Peterborough approved an application by Richard Wannop (Applicant) for a consent to sever a property at 98 Gill's Gully Lane in the Township of North Kawartha (Subject Property). John Wannop (Appellant) is appealing that decision for a number of reasons.

At the commencement of the hearing, counsels for the Applicant and Appellant informed the Board that the parties were working toward a settlement, and requested the Board to step down for a period so that discussions could proceed. At the recommencement of the hearing, counsel for the Applicant presented the Board with Minutes of Settlement (Exhibit 1), which had been arrived at as a result of the ensuing discussions.

Counsel for the Appellant informed the Board that he was deferring a Motion he had placed before the Board, but left open the possibility of reintroducing said Motion with 10 days' notice, in accordance with the Board's rules.

Darryl Tighe, a Registered Professional Planner, gave expert opinion on behalf of the Applicant. Mr. Tighe told the Board that the Subject Property comprises 1.69 acres on the easterly shore of Chandos Lake in the Township of North Kawartha in the County of Peterborough. It is to be divided into two lots with a right-of-way access.

In Mr. Tighe's uncontradicted expert opinion, the Minutes of Settlement represent good planning. He stated the application is in accordance with Section 53 of the *Planning Act*, represents an infilling situation on land appropriately designated in the Official Plan and complies with the Provincial Policy Statement, the Growth Plan and the County Official Plan.

The appeal is allowed in part and the provisional consent is given subject to the conditions set out in Attachment "1". At the request of the Parties, this Order shall be withheld until all of the items and conditions set out in Attachment "1" are satisfied.

"S. J. Sutherland"

S. J. SUTHERLAND
MEMBER

ATTACHMENT "1"**PL080127****Ontario Municipal Board
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**Minutes of Settlement
OMB Case No: PL080127**

The Appellant and the property owner herein agree to resolve the subject objection of the Appellant in accordance with these Minutes of Settlement;

The Parties Hereby Agree as Follows:

1. The Applicant for a Severance Richard Wannop shall immediately initiate an Application to the Township of North Kawartha to implement the closure and transfer of the shoreline road allowance as shown on the attached Plan. The parties hereby agree that, the said shoreline road allowance shall be transferred in order that it merges with the two Parcels, and the Applicant shall take all appropriate steps to implement that merger by way of Agreement or otherwise

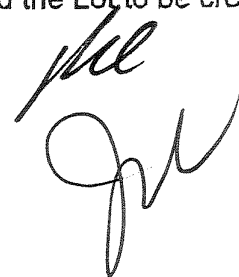
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as required pursuant to the *Planning Act*. The property boundaries and ~~dimensions of the said closed shoreline road allowance shall be identified in a~~ fair and reasonable manner in conjunction with the process initiated by the Township of North Kawartha, which shall include Notice to any neighbours and shall include Notice to the individuals involved with the administration of the estate of Josephine Wannop, and otherwise in accordance with the present policy of the Township of North Kawartha.

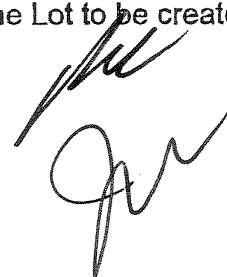
2. The Applicant Richard Wannop shall have a Plan prepared that accurately shows the location of the subject boathouse and/or all other applicable accessory buildings. The setback of all structures from any property lines existing or proposed by way of the Severance shall be shown. If required a minor variance to make the location of the boathouse and/or all accessory buildings legal and conforming shall be implemented by Richard Wannop and processed in accordance with the *Planning Act*.
3. The parties hereby agree that the Severance line for the said Parcel needs to be appropriately located as shown on the attached Plan. The same should be sensitive to topography, location of buildings, and location of any building envelope and septic systems. Richard Wannop shall have plans prepared that will show the building envelope for the Lot to be retained, and the Lot to be created. The said building envelope for both Parcels, and any septic tank and tile bed on both the Parcels shall be located and completed in accordance with appropriate setback requirements including any Building Code, septic, or other regulations which might be imposed by the Municipality, and Conservation Authority or the Peterborough County-City Health Unit (if required). The Applicant shall circulate the proposed Plan showing all such features including the building envelopes to the Municipality, Conservation Authority, and the Peterborough County-City Health Unit and any other agency having jurisdiction for the their evaluation and approval (if required).

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4. The said Applicant Richard Wannop shall enter into access Agreements if necessary with the Municipality in order to allow for access and egress over any road allowance, opened or unopened, in order to give continuous access and egress to the Lot to be created and the Lot to be retained. Furthermore, it is acknowledged that the septic tile bed and its related fill may encroach on a subject unopened road allowance and Richard Wannop herein agrees to make Application for an Encroachment Agreement from the Municipality or acquire the said property from the Municipality in order to have such encroachment legally recognized. The said Encroachment Agreement shall address any and all earth that presently covers any tile bed or septic tank and related fill. Richard Wannop acknowledges that the preferred approach would be to actually acquire the portion of the road allowance that constitutes the encroachment. However, if the Municipality is unable or unwilling to sell the subject portion of the said road allowance, then the parties herein agree that an Encroachment Agreement shall be obtained in order to legalize its location, and allow for its continued maintenance.
5. Richard Wannop herein agrees that any Survey Plan shall properly depict all appropriate Rights-of-Way for servicing the subject Parcel. Any of the subject Right-of-Way shall be constructed in a manner that properly takes into account topography and drainage. This should be undertaken in accordance with the *Planning Act* (Ontario).
6. Richard Wannop herein agrees that any plans required to implement the objectives of this Agreement should show the appropriate property boundaries, buildings, building envelopes as herein described, and location of any septic tank and associated tile bed for the Lot to be retained and the Lot to be created.



7. Richard Wannop herein agrees that any Lot area finally determined by way of the location of a specific Severance line needs to create Parcels, both retained and severed, that are to be of sufficient size to satisfy Peterborough County-City Health Unit requirements and issues for sewage disposal. Any and all required test pits shall be appropriately located and undertaken and completed and the building envelopes be finally identified arising out of commentary received from such Government entities. The Applicant shall file any appropriate Applications to the Municipality or Conservation Authority (if required) showing all pertinent features, existing buildings, and lines of Severance and such Plans as required.
8. The parties hereby agree that the Order of this Ontario Municipal Board granting approval for the subject Severance shall be withheld until all of the items and conditions herein are satisfied. Furthermore, the parties hereby agree that the Ontario Municipal Board is seized with the determination of any issues arising out of and in relation to the implementation of this Settlement Agreement, and either party may request, by Notice of Motion or otherwise in accordance with the OMB Rules to proceed to have any such matter in dispute adjudicated and decided. Both parties agree to act expeditiously within the context of the implementation of these conditions.
9. For the purposes of the Minutes of Settlement;
 - a) Applicant shall be Richard Wannop;
 - b) The Appellant is John Wannop;
 - c) The reference to Parcels shall relate to the land that is the subject matter of the Application for Severance, and includes the Lot to be created, and the Lot to be retained;



d) Plan means a detailed and accurate Plan prepared by an Ontario Land Surveyor, and shall include the Site features noted in this Agreement which shall include, but is not limited to, the topography, water courses, building envelopes, existing and proposed Rights-of-Way and grading, together with septic tank and associated tile bed for both Parcels.

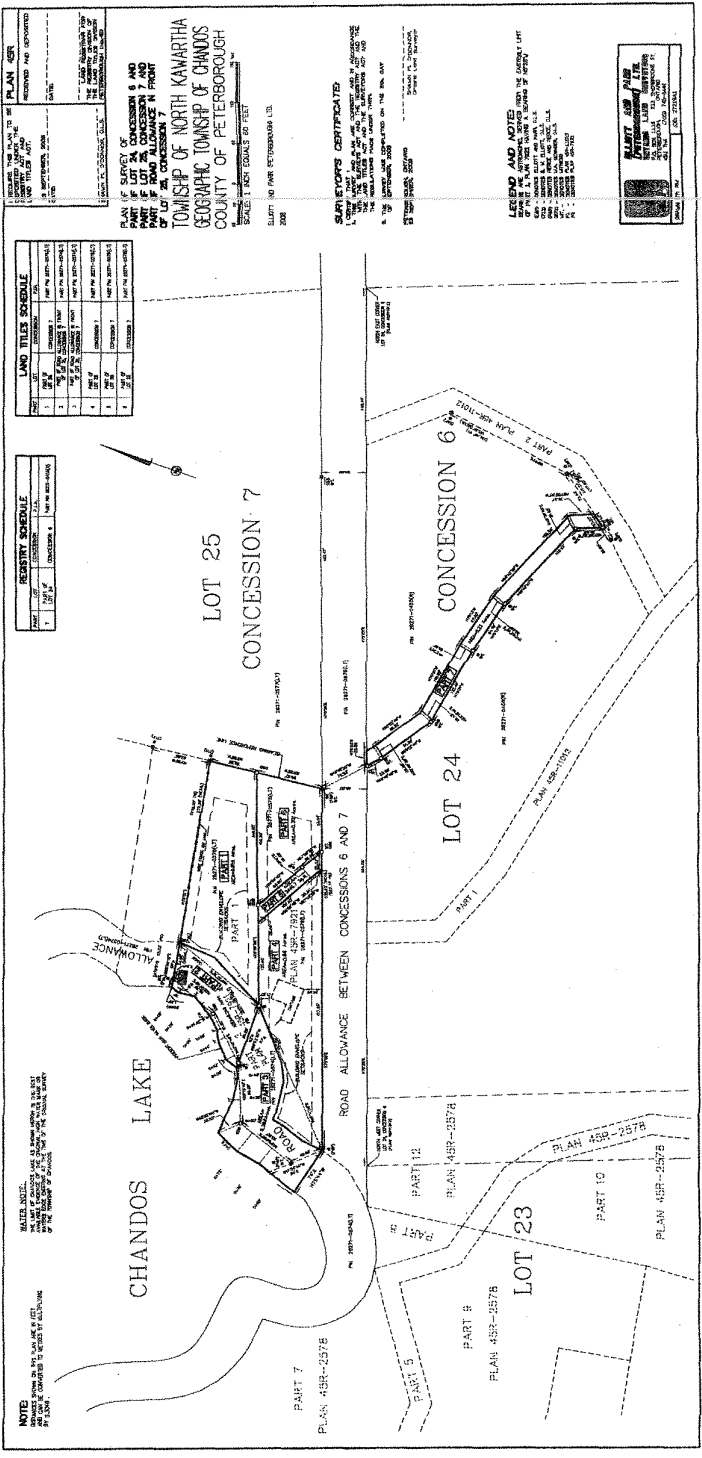
e) Peterborough County-City Health Unit makes reference to the Peterborough County-City Health Unit for the County of Peterborough.

10. Richard Wannop shall provide reimbursement to John Wannop for partial recovery in reference to cost and expenses sustained and herein agrees to provide a payment of \$1,000.00 thereto no later than the 30th day of October, 2008.

DATED at Peterborough this ^{slr} 29 day of September, 2008.


Richard Wannop


John Wannop



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