

ISSUE DATE:

April 27, 2012



PL111190

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

Applicant and Appellant: 1744965 Ontario Inc.
Subject: Conditions of provisional consent
Property Address/Description: 969 North Shore Road
Municipality: Township of Frontenac Islands
Municipal File No.: B-09-11-H
OMB Case No.: PL111190
OMB File No.: PL111190

APPEARANCES:

Parties

Counsel

1744965 Ontario Inc.

John Wilson

Township of Frontenac Islands

MEMORANDUM OF ORAL DECISION DELIVERED BY SYLVIA SUTHERLAND ON MARCH 29, 2012, AND ORDER OF THE BOARD

This was a settlement hearing related to a consent application by 1744965 Ontario Inc. (applicant/appellant) to sever land at 969 North Shore Road (subject property) on Howe Island in the Township of Frontenac Islands (Township) to add as an addition to an existing lot that is currently accessed by a right-of-way.

The subject property is designated Rural in the Township's official plan and is located in the Shoreline Residential Type One (SR1) Zone in the zoning by-law. It comprises a seasonal residential lot on the north side of Howe Island, adjacent to the St. Lawrence Rove, and has a combined lot area of approximately 9.3 ha, and a lot frontage of 513.4 m along North Shore Road. It also has an irregular shoreline lot frontage along the St. Lawrence River of approximately 784 m in total.

The application proposed to sever the western portions of the subject property, which have a lot area of 2.95 ha, and which have no road frontage along North Shore Road, and to add them to a smaller, vacant parcel of land along North Shore Road.

The retained parcel will have a lot area of approximately 5.76 ha and a lot frontage of 349 m along North Shore Road. It will have an irregular shoreline lot frontage along the St. Lawrence River of approximately 595 m.

The Township's Committee of Adjustment granted provisional consent subject to a number of conditions, the third of which read, "That the Roads Supervisor should provide approval as to the suitability of North Shore Road for an entrance to the severed and retained parcels, and that the entrance be located east of the unopened road allowance." The reason for this condition was that the existing entrance crossed the property of a neighbouring property owner.

The applicant/appellant appealed the decision on the basis that he had legal rights to the existing driveway, and that there were no land use planning reasons to impose the conditions.

At the request of the county planner, the County of Frontenac (County), the Township and the applicant/appellant met in a non-Board mediation process prior to the hearing. Subsequently, the applicant/appellant provided a letter requesting that condition three be amended to provide that the new entrance may lie on, and utilize, an unopened road allowance to provide access to the subject property. The Township agreed, on the condition that the property owners enter into a development agreement prepared in a form satisfactory to the Township and registered against title to the owner's property, at the owner's expense (Exhibit 3).

The Board was informed that minutes of settlement (MOS) had been arrived at between the parties. Land use planner, Peter Young, community planner for the County, gave uncontradicted land use planning evidence and opinion in support of the MOS.

Mr. Young supported the application as represented in the MOS, which he testified would ensure that the entrance to the subject property would no longer cross neighbouring private lands. He said the proposed new conditions also allow the work to be regulated by the Township and preserve the road allowance for future use.

It was Mr. Young's opinion that the application was consistent with the Provincial Policy Statement, conformed to the official plan, met the intent and purpose of the zoning by-law and had regard for subsection 51(24) of the *Planning Act*. He believed it represented good planning.

Based on Mr. Mr. Young's expert opinion, the Board Orders that the appeal is allowed in part and provisional consent is to be given subject to the conditions set out in Attachment "1" to this Order, and the following two conditions:

1. The flood elevation of the St. Lawrence River be staked out on the subject lands so that a 30 m (98.4 ft) building setback can be located on the severed and retained parcels.
2. An agreement be entered into under section 51(26) of *the Planning Act*, in order to maintain a 30 m vegetative buffer along the shoreline in front of the subject lands.

So Orders the Board.

"Sylvia Sutherland"

SYLVIA SUTHERLAND
MEMBER

ATTACHMENT 1

OMB File No. PL111190

ONTARIO MUNICIPAL BOARD

IN THE MATTER OF an appeal pursuant to subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the conditions imposed on the decision approving a lot addition bearing Municipal File No. B-09-11-H.

Applicant and Appellant:	1744965 Ontario Inc.
Subject:	Conditions of provisional consent
Property Address/Description:	969 North Shore Road
Municipality:	Township of Frontenac Islands
Municipal File No.:	B-09-11-H
OMB Case No.:	PL111190
OMB File No.:	PL111190

MINUTES OF SETTLEMENT

The parties to this appeal consent to an Order of the Board allowing the appeal, in part, and the granting of provisional consent on those terms and conditions approved by the Committee of Adjustments subject to the following modifications:

I. That conditions 2 and 3 be deleted and replaced with the following:

“2. That a 20 metre right-of-way be maintained/deeded for access to parcels Roll #1001 020 010 20900, 20901, 20902, 20903 and 20904 and the retained portion.

3. That an entrance to the severed and retained parcels onto North Shore Road over the unopened road allowance be in such location as the Roads Supervisor determines suitable and approves and that the owner shall enter into a development agreement with the Township for construction and maintenance of a private road on the unopened road allowance between Lots 15 and 16, Concession North Range on terms and conditions satisfactory to the Township including, without limiting the foregoing, an obligation to indemnify and save harmless the Township from all liability incurred by the owner or any third person using the unopened road allowance for this purpose. The development agreement shall be prepared in a form satisfactory to the Township and shall be registered against title to the owner’s property at the owner’s expense.”

II. These Minutes of Settlement may be signed electronically and in counterparts.

III. None of the parties will seek an order of costs by the Ontario Municipal Board against the other party in these proceedings.

OMB File No. PL111190

IN WITNESS WHEREOF the parties hereto have duly executed these Minutes of Settlement as of the ____ day of March, 2012.

**THE CORPORATION OF THE TOWNSHIP
OF FRONTENAC ISLANDS**

Per:

1744965 ONTARIO INC.

By its solicitors
NELSON WILSON & ADAMS

Name:
Title:
I have authority to bind the Corporation

John R. A. Wilson