

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



**ISSUE DATE:** August 26, 2015

**CASE NO(S):** PL111287

**PROCEEDING COMMENCED UNDER** subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

**Appellant:** Davis and McLay Developments Ltd.  
**Subject:** Failure of the Ministry of Affairs and Housing to announce a decision respecting Proposed Official Plan Amendment No. OPA #91

**Municipality:** Town of Northeast Manitoulin & the Islands  
**OMB Case No.:** PL111287  
**OMB File No.:** PL111287  
**OMB Case Name:** Davis and McLay Developments Ltd. v. Northeast Manitoulin & the Islands (Town)

**Heard:** April 2, 2015 by telephone conference call

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Davis and McLay Developments Limited

G. McAndrew\*

Ministry of Municipal Affairs and Housing

F. Paquin\*

Lake Manitou Area Association

M. Castigan, R. Coulter

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. CONTI ON APRIL 2, 2015 AND ORDER OF THE BOARD**

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[1] This is the decision for an appeal by Davis and McLay Developments Limited (“Appellant”) against the failure of the Ministry of Municipal Affairs and Housing

("MMAH") to make a decision regarding proposed amendment No. 91 to the Official Plan ("OPA 91") for the District of Manitoulin in the Town of Northeastern Manitoulin and Islands. The proposed amendment will permit the development of a twenty-one lot residential plan of subdivision on Lake Manitou at Part Lot 14 and 15, Concession 7 and Part Lot 14, Concession 8, Township of Bidwell, Town of Northeastern Manitoulin and Islands.

[2] Prior to the commencement of the hearing the Board was informed that the parties had reached a settlement. The parties filed Minutes of Settlement (Exhibit 1) and a revised OPA 91 (Exhibit 5). The Board heard that the parties had agreed to a further revision to OPA 91 in order to resolve the concerns of the Lake Manitou Area Association. The final version of OPA 91 was forwarded to the Board subsequent to the proceeding.

[3] The Board heard evidence in support of the settlement from Richard Hunter, Partner with Planscape. Mr. Hunter is a Registered Professional Planner who has more than thirty-five years of experience. He was qualified by the Board as an expert in land use planning.

[4] The Board heard that the lands subject to OPA 91 are currently designated as Agriculture District and Rural District in the District of Manitou Official Plan. The intent of OPA 91 is to redesignate the lands to Shoreline Residential District in order to permit the proposed subdivision. Mr. Hunter explained that the proposed subdivision is located on Lake Manitou which is a lake trout lake that is at capacity. He indicated that MMAH did not approve OPA 91 because additional development on the lake has the potential to impact nutrient levels in the lake and affect lake trout populations.

[5] The Board heard that the settlement recognizes two existing building lots on the property which may be reconfigured and created through consent.

[6] In addition, through the settlement the parties have agreed that a first phase of

the subdivision can be developed with six lots. The lots will be developed with septic systems that have phosphorus abatement technology and a program will be put in place to monitor phosphorus discharge. A second phase of the subdivision with a maximum of 13 lots cannot be developed unless MMAH is satisfied that there will be no negative effect on the lake's habitat. The parties have agreed that phase 2 of the subdivision will be placed in a Holding zone and cannot be developed unless the results of the monitoring are satisfactory.

[7] Mr. Hunter indicated that OPA 91 has a number of other clauses including a requirement that there will be no development within 30 metres of the shoreline.

[8] Mr. Hunter also indicated that through the Addendum to the Minutes of Settlement (Exhibit 2) clauses will be added to OPA 91 requiring that copies of the monitoring reports be provided to the Lake Manitou Area Association and that the extent of the required monitoring will not be reduced.

[9] Mr. Hunter stated that with the changes he was satisfied that the proposal is appropriate. In his expert opinion, the proposal is consistent with the Provincial Policy Statement ("PPS") and it meets all applicable planning requirements.

[10] The Board heard from Robert Coulter that although there were some remaining concerns about using an at capacity lake trout lake for an experimental program, that he and the Lake Manitou Area Association were in favour of the settlement.

[11] The Board reviewed the submissions and in view of the uncontested expert planning opinion and the consent of the parties, found that OPA 91 was consistent with the PPS and met all planning requirements. The Board issued an oral decision that accepted the terms of the Minutes of Settlement as revised through the addendum, and approved OPA 91 with the proposed revisions.

[12] Subsequent to the hearing the Board received a copy of OPA 91 with all

proposed revisions incorporated.

[13] In view of the above, the Board is allowing the appeal in part and approving OPA 91 as revised. The appropriate order is provided below.

## **ORDER**

[14] The Board orders that the appeal is allowed in part based upon the terms of the Minutes of Settlement and the Addendum to the Minutes of Settlement submitted as Exhibits 1 and 2;

And furthermore, that Amendment No. 91 to the Official Plan of the District of Manitoulin in the Town of Northeastern Manitoulin and Islands is modified as set out in Attachment 1 to this Order, and as modified is approved.

*“C. Conti”*

C. CONTI  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

### **Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

# ATTACHMENT 1

OPA 91

OPA 91 The Amendment

All of this part of the document entitled The Amendment, which consists of the following text and Schedules 'A' and 'B', constitutes Amendment No. 91 to the Official Plan of the District of Manitoulin.

## DETAILS OF THE AMENDMENT

The Official Plan is amended as follows:

1. Schedule A8 of the Official Plan is amended by re-designating the area shown on Schedule 'A' of this Amendment from Agricultural District and Rural District to Shoreline Development District.

The lands affected by this Amendment are further described as part of Lots 14 and 15, Concession 7 and Concession 8, being Parts 1, 2 and 3, Plan 31R-3552, as identified on Schedule B, Geographic Township of Bidwell, Town of Northeastern Manitoulin and the Islands.

2. The following policies shall apply to the land that is the subject of this amendment:

1. The two lots of record existing at the time this policy comes into effect shall be permitted seasonal residential uses and may be redesigned and approved by consent, separate from any phased subdivision application noted in Policy 3.

No more than two lots on the subject lands shall be zoned for development at any time unless the additional lots are part of the subdivision contemplated in Policy 3.

2. No other application for severance or plan of subdivision shall be granted, unless:

- 2.1 The application is for legal or technical reasons, and conforms with the generally applicable policies of this Plan, or

- 2.2 The application is in accordance with the conditional phased development proposal outlined in policy 3.1 below.

3. An application for plan of subdivision may be made to the Manitoulin Planning Board to be approved in two phases.

- 3.1 The first phase would only permit the creation of 6 additional lots. Approval of this phase shall not be granted except in the context of a subdivision agreement that includes, at minimum, the following terms:

- i. Sewage systems on each lot will be constructed as a conventional septic tile field or an Ontario Building Code approved tertiary treatment system, and partially treated effluent would then be directed to drain fields on each lot having B horizon Precambrian Shield soils that meet the same characteristics as the native soils in the Ministry of the Environment Lake Capacity Assessment Handbook, (May 2010) on page 38, section 5.2. It is

understood that on three of these lots, the Ecoflow or Waterloo Biofilter tertiary system with phosphorus treatment unit will be installed.

- ii. The installation of the sewage systems and the piezometers/wells, including verifying that the correct B horizon soil has been used, will be approved and certified by an independent qualified expert. This expert shall be retained by the Applicant, and shall be an individual acceptable to the Ministry of Municipal Affairs and Housing. All costs associated with retaining the experts shall be paid for by the Applicant, prior to any occupancy of an individual lot.
- iii. Once any of the septic systems have been commissioned and wastewater is being discharged to the systems, three continuous years of monitoring (co-ordinated by the applicant) on each system, will be undertaken by a qualified expert retained by the Applicant at the Applicant's expense, plus monitoring at year five and year ten, as outlined below. The expert shall be a person or organization satisfactory to the Ministry of Municipal Affairs and Housing.
  1. Three piezometer/wells will be installed in each of the six drain fields to evaluate distribution of the treated effluent, with a fourth piezometer/well in the down gradient mantle. The locations of the four piezometer/wells will be determined in consultation with the Ministry of Municipal Affairs and Housing. All piezometers/wells will be installed upon the completion of the drain fields being constructed. These wells will generally be of a shallow depth (<3 m) and may be constructed to the bedrock depth if site conditions dictate. The depth position of the screened intervals of the wells will be decided upon by the qualified expert after site conditions are assessed, but will generally include the bottom 30 cm thickness of the filter bed sand and any permeable zones present underneath the filter bed.
  2. For the first six months after installation of septic systems and occupancy of the residences, no sampling shall be required.
  3. Thereafter, groundwater sampling of the piezometers/wells shall be conducted within one week of each of the long holiday weekends in May, July, August and September or October until the completion of three years following the date of installation, occupancy and initial testing of each system. If the home is occupied during December through April, one additional sample would be required following this period of usage. The Applicant is responsible for ensuring that this monitoring will take place at his own or the individual new lot Owner's expense.
  4. All groundwater samples will be filtered (0.45 µm) and collected in two sample bottles, one untreated and one acidified to pH <2, prior

to delivery to an accredited laboratory. Analysis will be for chloride and nitrogen compounds (ammonia, ammonium, nitrates) and total phosphorus (acidified sample) within the laboratory specified holding times.

5. The Ecoflo or Waterloo Biofilter phosphorus treatment units shall be designed to permit the sampling of effluent. Effluent from the Ecoflo or Waterloo Biofilter phosphorus treatment units shall be collected on the same sampling schedule as the piezometers/wells. Effluent samples shall be unfiltered prior to delivery to an accredited laboratory and shall be analyzed for chloride and nitrogen compounds (ammonia, ammonium, nitrates), and total phosphorus. A field pH reading shall also be taken of the effluent.
6. Annual reports will be provided to the Ministry of Municipal Affairs and Housing and the Ministry of the Environment and Climate Change within two months following the end of each calendar year once a monitoring program for any of the test systems is established. The annual report shall be prepared by a qualified expert, retained by the Applicant and satisfactory to the Ministry. The report shall include, at minimum:
  - a. A summary and interpretation of all monitoring data with a comparison to the performance standard;
  - b. A description of sampling protocol and any difficulties encountered;
  - c. A discussion regarding the quality assurance/quality control program;
  - d. A summary of occupancy, a description of any operating problems encountered and corrective actions taken;
  - e. A scale site plan or plans of the entire site illustrating significant site features such as surface water features, seeps, ponds, ditches, roadways, the septic systems, as well as all the sampling locations;
  - f. A groundwater contour map showing the groundwater elevations for each well and the groundwater flow directions;
  - g. Tables summarizing all historical and current analytical results for all parameters;
  - h. Hydrographs and tables summarizing all historical and current water level data;
  - i. A copy of the borehole logs for all groundwater monitoring wells; and
  - j. A copy of the original laboratory analytical results.

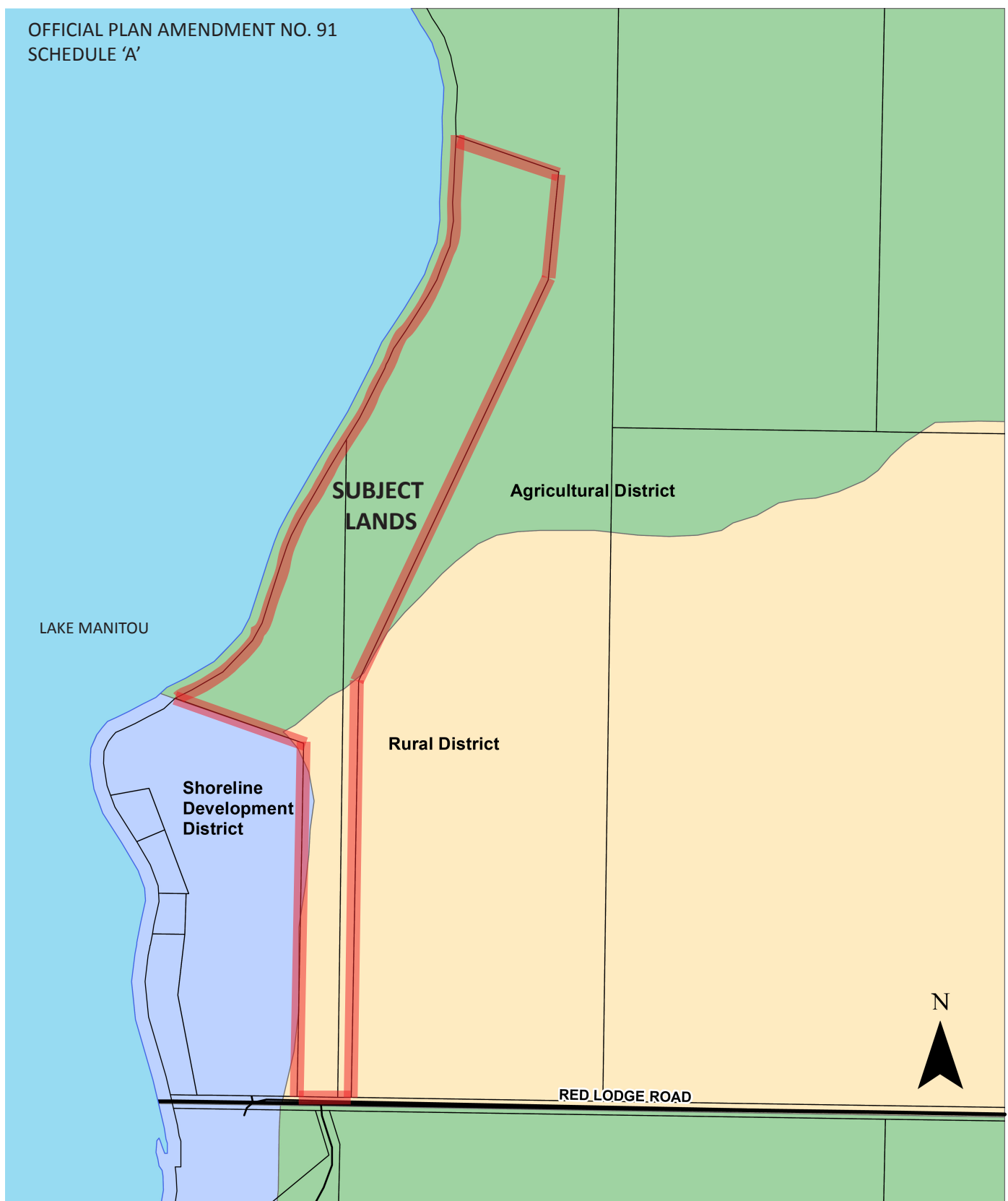
7. Near the end of the three year monitoring period, on each of the lots with only imported soils (no tertiary system), sediment cores will be retrieved immediately adjacent to each monitoring well location in the filter bed (three locations), and 5 depth-discrete samples of the filter bed sand per well location will be analyzed for desorbable P ('plant-available' P) assay provided by the University of Guelph Soil and Nutrient Laboratory. Sediment sample splits will be retained for a period of 1 year after collection for additional analysis if required (e.g. acid-extractable P analysis).
- iv. The Applicant agrees to provide permission to the Province or its authorized agent to attend on site to monitor the piezometers/wells once at 5 years and 10 years from the installation of the system, with the monitoring to be undertaken at the expense of the Ministry and not the applicant. The applicant agrees to maintain the piezometers during this time.
- v. The sewage systems must meet a performance standard of no more than 0.3 mg/ℓ total phosphorus in 80% of the samples from all of the monitoring wells.
- vi. Monitoring will be implemented through the Applicant. The Applicant or individual new lot owner will post with the Town of Northeastern Manitoulin and the Islands, as part of the subdivision agreement, a bond or other security of \$36 000 (that is, equal to the cost of the monitoring for three years on all lots), or \$6,000 per lot (or such lesser amount as the Ministry and the applicant agree) and in the event the Applicant or new land owner fails to carry out the monitoring in a satisfactory manner, the Town, after consultation with the Ministry of the Environment and Climate Change, may call on the bond or other security to carry out the monitoring.
- vii. The recommendations as contained in the Water Quality and Fish Habitat Assessment completed by Michalski Nielsen Associates Limited, and dated April 2010, will be supported within a Site Plan Agreement and/or the Subdivision Agreement.
- viii. Until such time as the second phase is approved, as noted in Policy 3.3, below, the Phase 2 block of land shall not be developed and will be placed in a Holding zone and will be subject to an inhibiting order in the subdivision agreement.
- ix. A copy of all monitoring reports will be provided to the Lake Manitou Area Association (LMAA) at the time they are submitted to the Ministries. The Association will be afforded the opportunity to offer its comments to the Ministries within 30 days of receipt of the reports, prior to the Province making its determination as to whether the results are satisfactory. It is understood that the LMAA has no veto authority.



- 3.2 The minimum terms of the Subdivision Agreement as outlined in 3.1.iii may be varied without an amendment to this Plan, upon consent of the applicant and the Ministry of Municipal Affairs and Housing with respect to practical details; but, in no case shall the variation reduce the general extent of required monitoring outlined in Section 3.1iii.
  - 3.3 The second phase of the plan of subdivision may include up to thirteen additional lots, and shall not be approved unless:
    - i. The Ministry of Municipal Affairs and Housing confirms that the performance of the technologies and/or soils used in Phase 1 is satisfactory,
    - ii. The second phase is to employ the same technologies and/or soils as were used in Phase 1 for septic purposes, and
    - iii. The Planning Board determines how the phasing is to be implemented, and will consider how the phasing can be accomplished through a red-line revision to the subdivision approval.
  - 3.4 Any new lots created in either phase of the plan of subdivision shall be for seasonal residential uses and shall have a minimum lot area of 0.4 hectares, or larger if determined necessary by the results of the studies required in Policy 3.6.
  - 3.5 Prior to final approval of the first phase of the plan of subdivision, Council shall adopt an amendment to the Town of Northeastern Manitoulin and Islands Zoning By-law that restricts the residential uses to seasonal residential uses. The zoning for the subject lands shall have a holding symbol put in place on the lands not included in the lots to be developed under the first phase of the subdivision, including the existing two building lots referenced in policy 1 above. The holding symbol is only to be lifted when the Ministry of Municipal Affairs and Housing has provided its confirmation in accordance with policy 3.3.
  - 3.6 A Servicing Options Statement and prescribed hydrogeological assessment shall be prepared prior to draft approval of the plan of subdivision. If water wells are to be the source of water supply; a study in accordance with Ministry of the Environment Guideline D-5-4 to demonstrate water quality and quantity will be required.
  - 3.7 A stormwater management plan shall be completed prior to the final approval of each phase of the plan of subdivision. This plan shall be to the satisfaction of the Planning Board and the municipality.
  - 3.8 An archaeological assessment must be completed by a licenced archaeologist prior to final approval of each phase of the plan of subdivision and is to be registered with the Ministry of Tourism, Culture and Sport.
4. No development or site alteration shall be permitted on any lot within a 30 metre natural vegetated buffer, which extends inland from the normal high water mark, adjacent to Lake Manitou, except for:

- a. A pathway no greater than two metres in width to provide access to the shoreline,
  - b. Measures intended to improve safety, such as the removal of dead or ailing trees,
  - c. Measures to permit improved views, such as minor limbing.
3. The policies set out in clause 2 of this Amendment may be renumbered for editorial purposes without the need for further amendment to the Official Plan.

OFFICIAL PLAN AMENDMENT NO. 91  
SCHEDULE 'A'



OFFICIAL PLAN AMENDMENT NO. 91  
SCHEDULE 'A'



SUBJECT LAND TO BE REDESIGNATED FROM  
AGRICULTURAL and RURAL DISTRICT TO  
SHORELINE DEVELOPMENT DISTRICT

Not To Scale

LOT 14, CONCESSION 8  
AND PART OF LOTS 14 & 15, CONCESSION 7  
GEOGRAPHIC TOWNSHIP OF BIDWELL  
THE CORPORATION OF THE TOWN OF NORTHEASTERN  
MANITOULIN & THE ISLANDS  
DISTRICT OF MANITOULIN

This drawing is for illustration purposes only.  
Base Map Source: Manitoulin Planning Board -  
Parcels (c) Teranet Inc. 2015

OFFICIAL PLAN AMENDMENT NO. 01  
SCHEDULE 'B'

I REQUEST THIS PLAN TO BE DEPOSITED UNDER THE REGISTRY ACT.

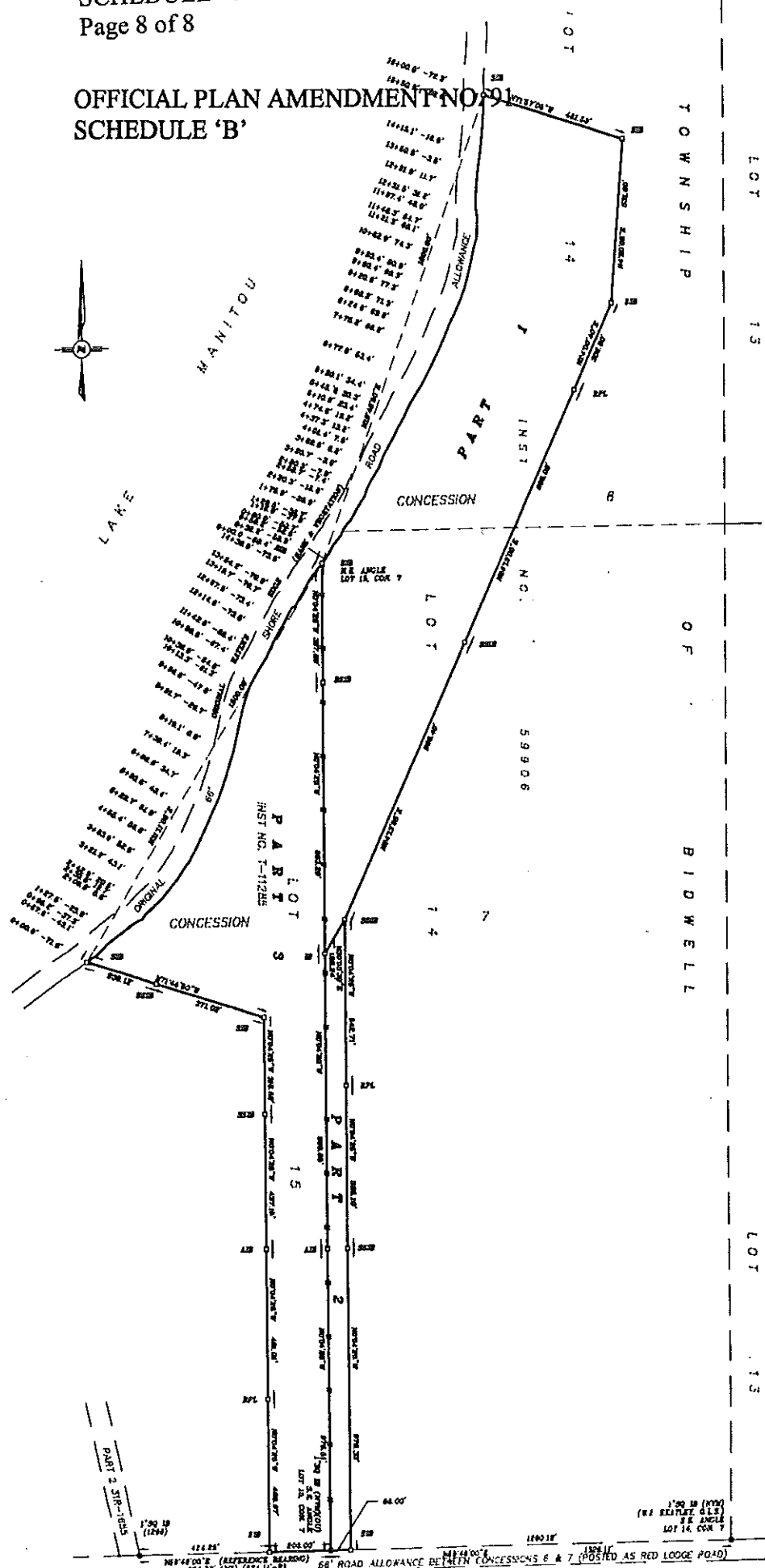
PLAN 31R-9552

RECEIVED AND DEPOSITED

DATE *March 21, 2007*

*W. J. Keatley*  
WILLIAM J. KEATLEY  
ONTARIO LAND SURVEYOR

PART	LOT	CONCESSION/PLAN	PARCEL/DIST. No.
1	PART OF LOT 14	CONCESSIONS 7 & 8	PART OF DIST. NO. 80006
2	PART OF LOT 14	CONCESSION 7	
3	PART OF LOT 15	CONCESSION 7	PART OF DIST. NO. F-11898



**SURVEYOR'S CERTIFICATE**  
I CERTIFY THAT

1) THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEY ACT, THE SURVEYORS ACT AND THE REGISTRY ACT AND THE REGULATIONS MADE UNDER THEM.

2) THE FIELD SURVEY WAS COMPLETED ON THE 14TH DAY OF MARCH 2007.

MARCH 21, 2007  
LITTLE CURRENT, ONTARIO

*W. J. Keatley*  
WILLIAM J. KEATLEY  
ONTARIO LAND SURVEYOR

- LEGEND**
- B - ADJUSTED SURVEY MONUMENT FOUND
  - D - ADJUSTED SURVEY MONUMENT PLANTED
  - NO - ADJUSTED BULLY
  - BN - ADJUSTED BORN BAR
  - SB - ADJUSTED STANCHION IRON BAR
  - SSB - ADJUSTED STANCHION IRON BAR
  - P - ADJUSTED PLAN 31R-1948 BY W.J. KEATLEY, O.L.S.
  - RSB - ADJUSTED REGISTERED PLAN NO. 13 (ORIGINAL SURVEY OF THE TOWNSHIP OF BIDWELL)
  - MS - ADJUSTED METAL
  - WV - ADJUSTED WOOD VENEER MARKERS
  - LV - ADJUSTED L.V. KEATLEY O.L.S.
  - CU - ADJUSTED CEMENT CURB
  - X - ADJUSTED BRASS BAIL FENCE

**IMPERIAL**  
DISTANCES SHOWN HEREON ARE IN FEET AND CAN BE CONVERTED TO METERS BY MULTIPLYING BY 0.3048

SCALE 1" = 200'

0 50 100 150 200 250 300 350 400 450 500 550 600 650 700 750 800 850 900 950 1000

**NOTE**  
BEARINGS ARE AZIMUTHICAL AND ARE REFERRED TO PART OF THE SOUTH LINE OF LOT 14, COR. 7 AS SHOWN ON PLAN 31R-1948 HAVING A BEARING OF N06°45'00"E

**NOTE**  
THE EAST END OF LAKE MANITOU AS SHOWN HEREON IN THE WEST AT THE STATIONARY POSITION OF THE WATER'S EDGE EXISTING AT THE TIME OF THE ORIGINAL SURVEY OF THE TOWNSHIP OF BIDWELL.

PLAN OF SURVEY OF PART OF  
LOT 14, CONCESSION 8  
AND PART OF  
LOTS 14 & 15, CONCESSION 7  
TOWNSHIP OF BIDWELL  
REGISTERED PLAN NO. 13  
THE CORPORATION OF THE TOWN OF  
NORTHEASTERN MANITOULIN & THE ISLANDS  
DISTRICT OF MANITOULIN

DATE MARCH 21, 2007 SCALE 1"=200' FILE 04-1875

**WILLIAM J. KEATLEY LIMITED**  
ONTARIO LAND SURVEYOR  
P.O. BOX 578  
LITTLE CURRENT, ONTARIO  
(705) 368-2221

68' ROAD ALLOWANCE BETWEEN CONCESSIONS 6 & 7 (POSTED AS RED LOGGE POLE)