

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



**ISSUE DATE:** February 06, 2017

**CASE NO:** PL151164

**PROCEEDING COMMENCED UNDER** subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Antonio Servello
Applicant:	Rosina Servello
Subject:	Consent
Property Address/Description:	990 Lakeshore Drive
Municipality:	City of North Bay
Municipal File No.:	B-18-15
OMB Case No.:	PL151164
OMB File No.:	PL151164
OMB Case Name:	Servello v. North Bay (City)

**Heard:** July 5, 2016 in North Bay, Ontario

**APPEARANCES:**

**Parties**

Antonio Servello and Pauline  
Provost Servello

Rosino Servello

**Counsel**

Self-Represented

Stefan Zhelev

**DECISION DELIVERED BY DAVID L. LANTHIER AND ORDER OF THE BOARD**

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**INTRODUCTION**

[1] This is an appeal of the decision of the Committee of Adjustment (“Committee”) of the City of North Bay (the “City”) dated November 3, 2015, (the “Decision”) whereby Rosina Servello, (the “Applicant”) was granted consent for the requested severance of a portion of the property located at 990 Lakeshore Drive, North Bay, being PIN Parcel

49178-0273 (the “Subject Property”) with six conditions (the “Conditions”). Antonio Servello (the “Appellant”) with his spouse Pauline Provost Servello as a co-party at the hearing, filed his appeal of that Decision on November 23, 2015 (the “Appeal”). The basis for the Appeal is to prevent the adjudication of the Appeal until there has been a final determination of his second round of litigation with his family members in Court File CV-15-6268 in the Ontario Superior Court of Justice—a proceeding which relates to title claims relating to the Subject Property and rooted in conflicts within his family. The Applicant, supported by the City, submits that the Appeal should be dismissed because the consent to the severance meets all of the relevant criteria as set out in the *Planning Act* (the “Act”) and represents orderly development of the Subject Property and good planning and that there is no merit to such an appeal based on avoidance of resolution.

[2] It is noted that the Appellant made a formal request to the Board for an adjournment prior to the scheduled hearing date of the Appeal, and the adjournment was considered and denied by the Board.

[3] Upon the evidence, and for the reasons set out in this Decision, the Board agrees with the submissions of the Applicant and dismisses this appeal.

## **APPLICATION, SUBJECT PROPERTY AND ISSUES**

[4] The application for consent pursuant to s. 53(1) of the Act (the “Application”) was filed by the Applicant, through her agent Paul Goodridge, a certified surveyor and planner in the Province of Ontario who testified as to his discussions with the Applicant to satisfy himself as to the informed instructions from his client. The evidence before the Board confirms that the Applicant is the registered owner of the Subject Property. Title documents were submitted confirming her status as sole owner and, in this case, her entitlement to sole registered ownership of the Subject Property has also been confirmed by both the Ontario Superior Court of Justice and the Ontario Court of Appeal.

[5] The Application, as submitted to the Committee for the City, proposed the creation of one new additional residential lot out of the PIN parcel owned by the Applicant on Lakeshore Drive in the City. Due to the circumstances of the Subject Property and the relative location of the structures, driveways, boundaries and the municipal street, the Application also proposed a number of easements for the purposes of municipal services leading to the buildings and for the purposes of ingress and egress to each of the two resultant parcels. The review of the Application with the City resulted in clarification and requirements in regards to those easements to be registered as conditions to the provisional consent which included easements in favour of the Appellant's Residence as explained herein.

[6] The revised Sketch Plan laying out the proposed severance and related rights-of-way on the Subject Property is appended to Exhibit 2 to the hearing and was provided in expanded form as Exhibit 10(b). The Subject Property is located on a major street in the City. The lands are designated as Residential under the City's Official Plan and are zoned as Residential Second Density (R2) and Residential Holding (RH) in the City's Zoning By-Law No. 2015-30 (the "Zoning By-Law"). The presence of the two dwellings/buildings on the Subject Property is a legal non-conforming use which is currently prohibited by the Zoning By-Law. If this severance was permitted, the non-conforming use would be rectified. The portion of the Subject Property which is to be severed under the Application under Appeal will front on Lakeshore Drive and is identified in pink in both Exhibits 2 and 10(b) as "Severed". Collectively, the severed lands and building structures can be referred to as the "Severed Lands" and the balance of the Subject Property retained by the Applicant as the "Retained Lands". The two rights-of-way which will run in favour of the Severed Lands, and to which the Retained Lands will be subject to under the registered easements, and the one easement to be registered in favour of the Retained Lands, are identified in green in Exhibit 2 but were not highlighted in Exhibit 10(b). The easements, as they will be required, in favour of the Appellant's Residence are not yet laid out in either of those two Exhibits, which are referred to in this Decision as the "Severance Sketch".

[7] The Application and Decision address the reality that two separate dwellings/buildings, one of which was the Servello family home, had been constructed on the Subject Property owned by the Applicant and her spouse, now deceased. The second building is a dwelling attached to a front workshop addition in which the Appellant had operated a business for some period of time up until December 31, 2014. The Applicant is the mother of the Appellant. The Applicant now wishes to effect a separation of the lands forming the Subject Property into two separate municipal properties, each with one of the two dwellings, and each with the necessary right-of-ways required to allow for proper access, connections to services, and use of the two residential properties. The Application and Decision which is the subject matter of this appeal was a second application. A prior application for consent was withdrawn and replaced with the revised application to address various concerns relating to set back in compliance with the Zoning By-law and the issues of access and service connections.

[8] The Board received evidence from the Appellant, and through Exhibit 7, that he owns lands to the west and east of the Subject Property as well as his residence located along Lakeshore Drive immediately east of the proposed Severed Lands. The Appellant's home property is identified as Part 3 on Plan 36R-11635 on the Severance Sketch (or PIN 49178-0272 (LT)) in Exhibits 2 and 10(b) and municipally is identified as 1000 Lakeshore Drive (the "Appellant's Residence").

[9] The issue before the Board is whether the request for consent to sever and subdivide the Subject Property is appropriate having regard to the criteria set out in s. 51(24) of the Act and the other requirements of the legislation. The issues and criteria that the Board must consider in any application for consent can be summarized as follows:

- (a) The Board must first be satisfied that a plan of subdivision of the land is not necessary as an alternative to the severance for the proper and orderly development of the municipality;

- (b) The Board must have regard to the health, safety convenience and accessibility for persons of disabilities, and the general welfare of the present and future inhabitants of the municipality;
- (c) The Board must have regard to the provincial interests set out in s. 2 of the Act which includes a list of broader policy and public concerns across the Province;
- (d) The consent must be consistent with the Provincial Policy Statement, 2014 (the “PPS”) and conform to, or not conflict with, all applicable provincial plans. In this case that plan would be the Northern Ontario Growth Plan, 2011 (the “Growth Plan”);
- (e) The proposed consent must conform to all applicable Official Plans and any adjacent plans of subdivision, if any;
- (f) The Board must determine, as one of the criteria in s. 51(24)(b) whether the proposed severance of the lands “is premature or in the public interest”;
- (g) The Board must also have regard to certain aspects of the Subject Property which is to be subdivided and severed including: the suitability of the land for the purposes for which it is to be subdivided; specifics relating to all highways (such as the number, width, grade and adequacy of such highways); the dimensions and shapes of the proposed lots; the adequacy of utilities and municipal services to the severed and retained parcels;
- (h) The Board is required to consider restrictions or proposed restrictions on the subject lands, all structures or buildings existing or proposed to be built, if any, and also any restrictions, if any, on adjoining lands;
- (i) There are some broad public concerns mentioned in the criteria. In the event they might be applicable to the lands being severed and retained,

- considerations as to the conservation of natural resources and flood control must be addressed as well as the extent to which the severance optimizes the available supply, means of supplying, efficient use and conservation of energy;
- (j) The proposed severance must comply with the applicable Zoning By-law, zoning order or development permit by-law or make a decision that requires an amendment of such by-laws or orders as a condition of the severance; and finally,
  - (k) The Board must have regard to any planning decisions that have been made by the approval authority relating to the same consent application and any supporting information and material that the approval authority had before it when making its decision.

Under the Act, conditions may also be considered and imposed by the Board in relation to the severance.

[10] Based upon the submissions of the Appellant, the primary issue to be addressed is whether the hearing of this Appeal is “premature” under the criteria identified in item (f) above because of the outstanding litigation before the Court. If the provisional consent to the severance is not premature, then it remains for the Board to determine whether the appeal should be allowed or dismissed with the consent application approved.

## **EVIDENCE AND ANALYSIS**

### **Severance Premature – Outstanding Court Action**

[11] It is necessary for the Board to accordingly first determine whether this Appeal be dismissed as premature as noted in s. 51(24)(b) of the Act because the Appellant’s various claims as to title and interests or access have not yet been determined on a

final basis. This necessitates consideration of the litigation before the Ontario Superior Court of Justice.

[12] The evidence before the Board confirms that this Application for consent was brought in the midst of an ongoing family conflict involving the Applicant and her children. The dispute was, and is, primarily between the Appellant, one of the sons of the Applicant and Carmelo Servello, and the remaining family members and resulted in two claims to the Ontario Superior Court of Justice. The first of these proceedings, under Court File No. CV-09-4778 (the “First Court Action”), was initiated by the Applicant against the Appellant to restore ownership of the Subject Property to her as a result of the alleged conduct of the Appellant and met with a counterclaim brought by the Appellant against the Applicant. The action was tried before the Honourable Justice Koke at a trial in June 2014 and the Decision, filed as Exhibit 8(a), indicates that there were a number of factual and legal issues before the Court most of which are not relevant to this Appeal. What is important is that the Decision of Justice Koke voided the prior transactions which purported to transfer a joint interest in the Subject Property to the Appellant and restored the Applicant as the sole owner. The Appellant then appealed the decision of Justice Koke to the Ontario Court of Appeal which was heard on June 3, 2015. The appeal was dismissed under the endorsement of the Court (Exhibit 8(b)) and confirmed the Applicant as the sole registered owner of the Subject Property.

[13] The Appellant then advanced a second claim under a Statement of Claim filed as CV-15-6268 (“the Second Court Action”) upon other grounds and it is this Second Court Action that was before the Court at the time that the Application was pending before the Committee and also when this matter was heard by the Board.

[14] According to the Statement of Claim in the Second Court Action (filed as Exhibit 7) the Appellant, in addition to other monetary claims for damages, advances other claims of entitlement to a part of the Subject Property. The section of the Subject Property over which the Appellant claims an interest is described as “the Workshop Property” located at 990 Lakeshore Drive in North Bay. The exact dimensions of this

“Workshop Property” are not precisely defined in the Claim but clearly correlate to the proposed Severed Lands at issue in this Appeal. The Appellant’s evidence is that the office and workshop, which are the two buildings on the Severed Lands constructed by him, were promised to him under the terms of an agreement between himself and the Appellant and his father Carmelo Servello.

[15] The merits of such claims advanced by the Appellant against his mother (and, as well, his sister and a lending institution) are not within the jurisdiction of the Board and are mostly irrelevant. However, it is important to identify three aspects of the Appellant’s claims in the Second Court Action, for the purposes of analysis which are as follows:

- (a) The Appellant is requesting declaratory relief for interlocutory orders and injunctions to prevent the Applicant from transferring or severing that portion of the Subject Property which he describes as “the Workshop Property” and which is more or less the same as the Severed Lands and Buildings laid out on the Severance Sketch. Specifically, the Appellant’s claim in subparagraph 1(c) requests:

An interim and interlocutory order pursuant to Rule 45 of the Rules of Civil Procedure for the preservation of the Workshop Property, and restraining the defendant, her agents, assigns, attorney(s) or other persons purporting to act on her behalf from transferring and/or severing said property;

This request for the injunctive relief relates, more or less, to the portion of the Subject Property which is to be severed under the Application and Appeal now before the Board;

- (b) The Appellant also asks for rights-of-way *via* three different routes across the Subject Property to permit access by the Appellant across these lands to three different parts of the other lands to the west and east which the Appellant claims are required to access these other adjacent lands which he owns;



(c) The Appellant also asks the court for an Order to compel the Applicant

to cooperate with a severance application with respect to the Workshop Property to be prepared by the Plaintiff [Appellant], and in the event the severance is granted, transferring the Workshop Property to the Plaintiff [Appellant].

The result is that the Appellant is (again subject to the precise parameters of the severed lands forming the “Workshop Property”) asking the Court for relief to permit more or less the same severance of the Severed Lands that is being requested by the Applicant, but that it instead be transferred to him.

[16] Except as to the question of prematurity, all of this evidence is really anecdotal and of no direct relevance to the issues before the Board because the Board has no jurisdiction to deal with such issues of legal title to lands. Pursuant to sections 36 and 37 of the *Ontario Municipal Board Act*, the Board has exclusive jurisdiction only in respect of all matters in which jurisdiction is conferred on it by that Act or by any other general or specific act, and to hear and determine all applications and proceedings instituted, and matters brought before it. Disputes relating to of rights of ownership or interests in title to real property is not within the enumerated list of matters over which jurisdiction is conferred. As the registered owner of the Subject Property has actually been confirmed by the Ontario Superior Court of Justice and the Court of Appeal, the issue of ownership of the Subject Property and the ability to bring the Application for consent to the severance is certainly not disputed. The Board has no ability to go beyond matters of registered ownership of lands which are the subject matter of an application for consent under s. 53(1) of the Act in any event and certainly, where the evidence before the Board is that the Courts have actually adjudicated the Applicant’s right of sole ownership, there is no reason for the Board to conclude that the severance, if appropriate upon all other planning grounds, is premature.

[17] This finding of the Board is no different in relation to the Appellant’s claims for access or rights-of-way to the abutting lands which he already owns. The Appellant argues that if the severance is approved before the Second Court Action is heard, he will “lose access” to his lands abutting the east and west boundaries (other than Part 3

on Plan 36R-11635 which fronts on Lakeshore Drive). The Board does not agree. The Appellant is presently the owner of abutting lands which he alleges are landlocked. The Applicant is presently the owner of the entirety of the Subject Property. The approval of the application for the severance will not, itself, change this in any way and the approval of the severance will not result in any new adverse impact upon the Appellant or cause the Appellant's lands to be landlocked. They are already landlocked. This is to be distinguished with factual situations where the requested severance will, in and of itself, cause a portion of the retained lands to be landlocked from access to a public highway or alternatively the configuration of the severance in relation to the retained lands might conceivably cause other lands abutting the retained or severed lands to become landlocked, where they were not previously landlocked. That is not the case here. The requested configuration for the right-of-way the Appellant requests from the Court will not be impacted by the severance and the severance cannot be considered to be premature because the Appellant has requested rights-of-way from the Court in relation to these other abutting lands.

[18] The remaining question would be whether the nature of the claims advanced by the Appellant in the Second Court Action would somehow give rise to a finding by the Board that the hearing of the Appeal is premature because these outstanding claims remain unresolved. The nature of three of the Appellant's claims in that Second Court Action, as set out in paragraph 15(c) above, are sufficient to answer that question. The jurisdiction of the Board under the legislation is to determine whether the Application for Consent by the Applicant should be granted and what conditions should apply to the provisional consent. The jurisdiction of the Ontario Superior court is to determine whether the further claims for relief by the Appellant, in relation to the Subject Property, are proven and what remedies should be granted. The Appellant has very clearly, and correctly, directed all matters relating to ownership of lands forming the Subject Property, including rights of access across the Subject Property, to the Court. This very clearly includes the issue of whether there is to be any declaratory order to suspend the outcome of the Board's decision and order on the issues before it under this Appeal. Under sections 97 and 101 of the *Ontario Courts of Justice Act*, only the Court may provide interlocutory injunctions, mandatory orders or declaratory orders.

[19] As the relative jurisdiction of the Board and the Court is clearly delineated, it cannot be the case that the severance is premature, or that the adjudication by the Board is premature, simply because there is an outstanding action before the Court that involves claims relating to the Subject Property. If the severance is approved by the Board, and the Appeal dismissed, the Court could, if persuaded by the Appellant, issue injunctive or declaratory relief that might affect or delay the implementation of the provisional consent by the Applicant. This would not impact the considerations of the Board in approving the severance. Accordingly, the Board cannot conclude that the hearing of the appeal relating to the severance, or the severance itself, if approved by the Board, is premature.

[20] The evidence before the Board (see paragraph 15(c) above) also confirms that the Appellant himself acknowledges the necessity and appropriateness of implementing the severance of the Severed Lands from the Subject Property. He asks that the Court compel the Applicant to cooperate to apply for the severance of the Severed Lands and Building (however the exact boundaries of such lands might be determined) and that he receive title to the Severed Lands identified by him as the Workshop Property. As the Appellant himself seeks the implementation of the severance, it is difficult for the Board to conclude that the Appellant asserts any legitimate planning grounds to oppose the appropriateness of the severance or that it would be premature to proceed with that severance. If the Appellant were successful in persuading the Court that he should receive such relief, and if the Board now approves the severance, then the Court might well direct the benefit of the severance to accrue to the Appellant as matter of entitlement to legal title to the Severed Lands and Buildings. Again, this matter of legal interest in the Severed Lands is beyond the jurisdiction of the Board and includes the jurisdiction of the Court to determine legal interests in the Severed Lands, and is separate and apart from the Board's jurisdiction to decide whether the provisional consent to the severance should be granted. The Board cannot conclude that the severance would be premature given the fact that the Appellant himself moves for implementation of the severance before the Court.

[21] Upon the facts before it, and for these reasons, the Board does not accept the submissions of the Appellant and does not find that the severance applied for on the Subject Property is premature for any reason relating to the Appellant's Second Court Action.

*Other Planning Evidence and Issues*

[22] It now remains for the Board to determine whether the severance should be approved for any other reason relating to the criteria and principles governing the application for Consent. The Appellant provided no planning evidence nor any planning grounds for the appeal beyond the arguments relating to the Second Court Action as set out above. The Applicant's planning and surveying expert, and the additional expert evidence provided by the City's planner, was uncontradicted by the Appellant and in all respects, there is no conflicting planning evidence before the Board to support the appeal.

[23] In matters relating to the planning issues, the Appellant expressed only the concern that the setback requirements for the front of his residence might be affected by the severance. Since no new construction will occur, and the boundaries of the Subject Property will not change, the severance has no impact on the set-back compliance of any buildings on the Appellant's Residence. The issue of access to the Appellant's Residence is addressed below.

[24] The Board received expert planning and surveying evidence from Mr. Goodridge who was qualified as an expert to provide both planning evidence and expert evidence relating to surveying. Mr. Goodridge's planning evidence was supplemented and supported by the planning evidence provided by Beverley Hillier, the Manager of Planning Services for the City who was also qualified to provide planning evidence. Both witnesses provided evidence supporting the appropriateness of the requested severance and recommended the approval of the provisional consent as provided by the Committee with the conditions as proposed.

[25] It was the opinion of Mr. Goodridge that at the higher level the severance would be consistent with the PPS and would conform to the Growth Plan and generally that the severance would represent good development of the Subject Property and make good and efficient use of existing municipal services. With respect to the Official Plan, Mr. Goodridge confirmed that the existing location of the two residences on the one property represented a legal nonconforming use and was of the opinion that the intent under the Official Plan is to eventually allow for conversion and correction of existing nonconforming uses and development in order to promote orderly compliance with the Official Plan. For this reason Mr. Goodridge opined that the severance would in fact improve the current situation with a minimum of conflict and allow for the orderly development and creation of a new residential lot in compliance with the Zoning By-law. As the current Zoning By-law prohibits the existence of two dwellings, the conversion of the workshop to residents, and the reconfiguration resulting from the severance to ensure that each of the two dwellings were on their own parcels of land lots would eliminate the legal nonconforming use and rectify the issues. As such, Mr. Goodridge's opinion, the severance with the conditions represents good planning, consistency with the Official Plan, and certainly an improvement on the current situation meeting all requirements of the Zoning By-law.

[26] Ms. Hillier concurred with Mr. Goodridge in all respects and testified that the proposed severance would result of a betterment of the existing arrangement of buildings and a lot configuration which was, as she again confirmed, in compliance with the Zoning By-law. Ms. Hillier's opinion, from the perspective of municipal planning, is that it is preferable to correct circumstances as they currently exist to allow for the creation of separate properties for each of the two dwellings, both the existing single detached dwelling, and the proposed converted dwelling. Ms. Hillier also confirmed that both the Severed and Retained Lands would meet all regulations of the Zoning By-law particularly since the severance proposed the conversion of the existing workshop office into a single detached dwelling, which was a permitted use. Referring to both the PPS and the Official Plan as reviewed in her Report filed in evidence, the severance would, with the necessary easements in place, promote, and support, appropriate, desirable and orderly development of the lands.

[27] In regard to the specifics of the proposed configuration of the Severed Lands and Retained Lands, Mr. Goodridge provided a detailed overview of the Severance Sketch. With the additional easements and rights-of-way, Mr. Goodridge testified that the severance allowed for the appropriate development and use of the lands by ensuring access to adequate municipal services and means of ingress and egress from both the Retained Lands and the Severed Lands. Mr. Goodridge reviewed the specifics of the Severance Sketch confirming that this latest and final outline, as presented for review, was consistent with the concerns as referenced by the City staff, subject to final confirmation as to the easements relating to the Appellant's Residence. Addressing the Appellant's general concern, Mr. Goodridge stated that the layout allowed for compliance of all buildings in the Subject Property with all setback requirements under the Zoning By-Law. Ms. Hillier concurred and confirmed that the requested easements, as recommended by the City engineer's, would allow for the orderly use of both of the properties in a manner that would minimize or avoid any concerns and conflicts in creating the additional residential lot adjacent to, and within, the Retained Lands.

[28] In regards to ingress and egress rights-of-way, Ms. Hillier confirmed the requirements for two right-of-way easements for ingress and egress on both the Severed Lands and Retained Lands as noted in the Decision of the Committee. One such right-of-way would be along a small angular section of the Severed Lands located along the west boundary of the Severed Lands in favour of the Retained Lands to permit ingress and egress access over a small section of the portion of the Severed Lands lying between the two dwellings on the Retained and Severed Lands and leading to the garage located at the rear of the dwelling on the Severed Lands. The second right-of-way would be an equidistant strip of the eastern portion of the Retained Lands identified as the "Sand and Gravel Driveway" located along the east boundary of the Severed Lands and extending from the street to a point to the rear of the dwelling in favour of the Severed Lands to permit ingress and egress access to the rear area of the Severed Lands behind the dwelling.

[29] Mr. Goodridge confirmed that the existence of the two rights-of-way for ingress and egress as noted above, would provide sufficient vehicular access to the rear garage

of the dwelling on the Retained Lands and to the rear of the dwelling on the Severed Lands as identified on the Plan. Ms. Hillier concurred with this opinion.

[30] As to the necessity for servicing easements, Ms. Hillier confirmed that the Engineering department at the City had identified the necessity and location of the service utility lines required for the benefit of the Severed Lands which would run across the eastern portion of the Retained Lands. This proposed service easement was confirmed by Mr. Goodridge to be approximately 3 meters wide and is laid out on the Severance Sketch. A utility service easement was not required for the dwelling on the Retained Lands as those services were wholly within the Retained Lands leading to the street.

[31] The Board also heard evidence with respect to the matter of both a servicing easement and possibly an ingress and egress right-of-way leading to the Appellant's Residence across the Retained Lands and possibly a small portion of the Severed Lands. Ms. Hillier testified that the City's Engineering Department had determined that some services leading to the Appellant's Residence might encroach over the Subject Property and it was considered appropriate and best practice to ensure that at the time of registration of the easements to effect the severance in relation to the Subject Property, that a service easement be registered for such services leading from the municipal lines on Lakeshore Drive to the Appellant's Residence. This servicing easement to the Appellant's Residence at 1000 Lakeshore Drive would be across the south eastern portion of the Retained Lands and possibly a small portion of the Severed Lands (as noted by the dashed line on the Survey Plan). Such a service easement would be located and laid out on the final Plan of Survey in the necessary perpendicular width depending upon the exact location and depth of the service lines and in consultation with City staff. This service easement would be registered in favour of the Appellant's Residence property to avoid any concerns relating to municipal services arising as a result of the severance.

[32] Finally, the Board heard evidence regarding the possibility of an easement for ingress and egress access required for the Appellant's Residence property due to the

location of that property's parking area in the front of the Appellant's Residence accessed and approached from the south west off Lakeshore Drive. The existence of a Hydro utility pole was noted in close proximity to the entrance to the parking area fronting the Appellant's Residence and what would also be the entrance to the ingress and egress right-of-way in favour of the Severed Lands. The Board heard evidence from Mr. Goodridge and Ms. Hillier that the severance would ensure the ability of vehicles to legally access the front of the Appellant's Residence from Lakeshore Drive. As was required in the amended Conditions to the provisional consent granted by the Committee, to the extent necessary, an access easement would also be registered over such immediate and limited area of the eastern portion of the Severed Lands, and possibly a small portion of the southeastern corner of the Severed Lands, that might be required to ensure vehicular access to the area identified on the plan as the "Sand and Gravel Parking Area". This additional access easement would be in the general area of the small surveyed "Part 2" on the Severance Sketch immediately to the west/southwest of the "Sand and Gravel Parking Area".

## **SUMMARY**

[33] In summary, based upon the uncontroverted planning evidence of Mr. Goodridge and Ms. Hillier, and upon review of the Severance Sketch, and the Conditions as set out in the consent, the Board finds that the proposed consent as laid out on the Severance Sketch submitted to the Board represents proper and orderly development of the Subject Property conforms to the Official Plan, is consistent with the PPS and conforms to the Growth Plan. The Board finds that the Severance Sketch as presented to the Board will allow for improvements to the current situation which will result in compliance with the requirements of the Zoning By-law. There will be a discontinuance of the legal nonconforming use, good use of municipal services, and overall orderly development of the Subject Property. The Board recognizes the attention that has been devoted to ensuring that the necessary easements for servicing and ingress and egress will avoid conflicts and allow for orderly and legal use of the Severed and Retained Lands, and the dwellings now located on separately owned parcels of land. As well, the proposed configuration of required easements will also maintain best municipal planning practices



by correcting and registering, for the benefit of the City and the Appellant's Residence property, such servicing and access ingress and egress easements that are necessary to ensure connections to the municipal street and services. As such, the provisional consents, with the conditions indicated, and as clarified, will meet all the requirements of the Act and will represent good planning, having regard to the criteria and matters set out therein and to the Decision made by the Committee and the information considered by the Committee in making that decision.

[34] The Board will accordingly dismiss the Appeal for the reasons indicated and will approve the provisional consent as set out in the Decision of the City's Committee dated November 3, 2015, in file No. B-18-15, with the Conditions as imposed by the City, numbered 1 to 6. Given the evidence, and the not-as-yet precisely determined form of the easements in favour of the Appellant's Residence property, the Board will provide clarification to ensure that the required easements for services and for ingress and egress are in accordance with the testimony provided to the Board. As these additional provisions are only minor clarification of the existing conditions the Board finds that no further notice is required in accordance with s. 53(35.1)

## **ORDER**

[35] The Board orders that the appeal is dismissed and the provisional consent as set out by the Committee of Adjustment of the City of North Bay in Resolution 4 dated November 3, 2015 is to be given, subject to the six Conditions as set out therein, with the following amendments to the approvals and Conditions for clarification purposes:

- (a) The right-of-way easements and service easement, as approved by the Committee, shall be as they are set out in the Severance Sketch identified in this Decision, subject to such adjustments to the boundaries of such easements as are determined to be necessary to give effect to the purposes of such easements;

- (b) For the purpose of clarification, Condition No. 6 of the Conditions shall mean that the servicing easement shall be for the purposes of registering such easement as may be necessary to encompass those service lines extending from Lakeshore Drive to the property at 1000 Lakeshore Drive, PIN 49178-0272 and noted to be in the approximate location of the dashed line set out in the Severance Sketch identified in this Decision, subject to such adjustments to the boundaries of such easement as are determined to be necessary by the City based upon the exact location and depth of the service lines and to give effect to the purpose of such easement; and
- (c) For the purpose of clarification, Condition No. 6 of the Conditions shall mean that the access easement, shall be for the purposes of registering such easement as may be necessary to permit ingress and egress from Lakeshore Drive to the Sand and Gravel Parking area located in the front, and to the south, of the dwelling located on the property at 1000 Lakeshore Drive, PIN 49178-0272 for the purposes of ingress and egress to that property, subject to such adjustments to the boundaries of such easement as are determined to be necessary due to the location of a hydro pole located on Lakeshore Drive and to give effect to the purpose of such easement.

[36] For the reasons indicated the Board is satisfied that pursuant to s. 53(35.1) of the *Planning Act*, these additional clarifications as to the easements and conditions are minor and require no further notice.

*“David L. Lanthier”*

DAVID L. LANTHIER  
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.

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