

DECISION AND ORDER

Decision Issue Date Monday, May 25, 2020

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

Appellant(s): MBM HOMES INC.

Applicant: MARIO FARAONE

Property Address/Description: 25 WESTDALE DR

Committee of Adjustment Case File: 19 241076 NNY 06 CO (B0043/19NY)

TLAB Case File Number: 19 262853 S53 06 TLAB

Hearing date: Wednesday, May 20, 2020

DECISION DELIVERED BY Ian James LORD

APPEARANCES

NAME	ROLE	REPRESENTATIVE
MARIO FARAONE	APPLICANT	
MBM HOMES INC.	APPELLANT/OWNER	RUSSELL CHEESEMAN*
TJ CIECIURA	EXPERT WITNESS	

*COUNSEL

INTRODUCTION

This matter arises by way of an Owner's appeal from a refusal, on December 5, 2019, by the North York Panel of the City of Toronto (City) Committee of Adjustment (COA) to recognize and allow a consent request in respect of 25 Westdale Drive (subject property).

The City took no part in the consideration of the appeal to the Toronto Local Appeal Body (TLAB).

There are no other Parties of Participants.

The matter was heard May 20, 2020, on consent, and during the Suspension Period of the COVID 19 crisis by way of electronic (virtual) hearing. Electronic Hearing events on consent are an exception to the general cancellation of Hearing events and filing suspension orders of the TLAB, the Province and City.

The TLAB expresses its appreciation to Mr. Cheeseman and Mr. Cieciora for their preparation, their response to the pre-filing requests of the Member and their consent to an expedited consideration of the appeal, in an all-electronic format.

BACKGROUND

The request for consent to sever the subject property arises in an unusual circumstance. An identical request for severance, with associated variances, was made and approved by the COA in a Notice of Decision dated July 21, 2016, mailed July 28, 2016.

Neither the consent nor the associated variances were appealed. As such, the variances came into effect; however, the TLAB was informed that there is 'no record' of the requisite Certificate ever having been issued to effect the consent, to permit its registration or, as would follow, allow for separate transfer of the created lots.

The Owner has elected to repeat the consent application process.

In hearing the matter, I advised I had not attended the site but had reviewed the pre-filed materials and conducted a 'virtual' tour of the surrounding streetscape, via *Google Maps* surveillance.

The matter proceeded with the Owner's planning evidence being provided by Mr. Cieciora, who was accepted and acknowledged as being an accredited land use planner capable of offering land use planning opinion evidence on the appeal.

MATTERS IN ISSUE

The sole matter in issue before the TLAB is as to whether a consent should be granted to create the lots as considered in 2016 and again in 2019, on appeal from the COA.

There are no variance matters before the TLAB.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

Consent – S. 53

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
 - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;

(k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;

(l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and

(m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).”

EVIDENCE

Mr. Ciecura was sworn on a bible in his possession. A consolidated document book had been prepared and filed but had not been viewed prior to the Webex appointment. Mr. Ciecura's documents, *curriculum vitae*, Expert Witness Acknowledgement (Exhibit 1), Expert Witness Statement (Exhibit 2), and Urban Forestry Tree Permits (2-7827545 Exhibits 3a, and b) were filed as exhibits. They were referred to as 'Tabs' in the consolidated filing.

In oral testimony supplemented by shared screen document references, Mr. Ciecura provided the support basis for his opinion expressed in Exhibit 2 (Tab 20), that the requisite considerations and standards, above listed under 'Jurisdiction', warranted a re-approval of the consent.

Salient in his evidence was the following:

1. The lot frontage and lot size characteristics of the proposed lots were considered and approved in 2016; as such, they represent the standards in the zoning by-law in effect for the subject property pursuant to section 4.5.8 of the City Official Plan;
2. Under authority of the 2016 variances and consent, building permits were issued for two single detached dwellings on the then approved lots; the dwellings have since been constructed and the 'final stage' of approval, occupancy permits, have been issued.
3. The dwellings as constructed are fully compliant with zoning, including the 2016 variances, are connected to full municipal services and have no known outstanding work orders, infractions or Notices.
4. Conditions under consideration in 2016 respecting matters put in issue by Urban Forestry (Exhibits 3a,b), Engineering and Construction Services (parking and vehicle storage elevations; installation and servicing connections and municipal numbering) have all been satisfied through building and occupancy permit issuance .
5. A Planning Staff Report on the current Application dated November 26, 2019, recommended refusal of the consent. However, as apparent from its text, it

- appears to repeat an earlier 2016 opinion without regard to or the recognition of the passage of time, the COA decision on the variances and the construction - all extant. Indeed, the COA decision on appeal cites as grounds for the refusal, elements of the variance tests that are not in issue (see: draft COA Minutes, December 5, 2019).
6. The lots are unable to be transferred pending a consent Certificate; diligent investigations were unable to determine the reason for or the existence of any COA record of the processing of compliance with the 2016 approval, despite the pre-filed record on the appeal of the fulfillment of conditions.
 7. The 'as-built' condition of the dwellings attests to their consistency and fit with their Neighbourhoods designation and the 'general character' of the area as directed by the preamble and policies applicable in section 4.1.5 of the Official Plan. There are a variety of lot sizes in the vicinity and their character has ample replication. The subject property is the largest, at a 20.84 m frontage, in the immediate area.
 8. The May 1, 2020 revisions to the Provincial Policy Statements represent no material changes affecting the consistency of the consent Application which also was said to conform to the 2019 Growth Plan.
 9. The Witness Statement, Exhibit 2, and witness found compliance (or non-applicability) with all subjects raised in section 51 (24), above; a plan of subdivision is not required.
 10. The planner recommended no conditions were necessary to be applied, but accepted the applicability of Practice Direction 1 of the TLAB.
 11. The draft R-Plan attached to the 2016 COA Decision and that appeal remains unchanged.

ANALYSIS, FINDINGS, REASONS

The evidence called by Mr. Cheeseman through Mr. Cieciora was uncontested, relevant and thorough.

I am satisfied that the oral advice and building permits issued evidence satisfactory compliance with the matters raised by Engineering and Construction Services, despite its November 7, 2019 report date. Further, that the permits requested by Urban Forestry have been adequately addressed in Exhibit 3a, b; as well, it is apparent that both street oriented trees have survived construction to date.

I accept that the policy and statutory tests and opinions thereon, as above recited in brief, but more thoroughly canvassed orally and in Exhibit 2, are adequate and appropriate to allow the consent.

I am surprised and dissatisfied with the review conducted by Planning Staff in not updating the information reviewed for the subject property, prior to submitting its Report dated November 29, 2019 to the COA. Neither the COA nor the TLAB are served by Application commentary that is based on outdated or irrelevant considerations.

The TLAB respects the planning advice provided by the professional planning staff of the City. While Applicants are encouraged to monitor and address that advice and advise of discrepancies, the primary responsibility for accuracy lies with the author at the time of drafting and submission. In this case, variances had been granted and finally approved some three years earlier and the subject lots had been built upon pursuant to public process approvals that are neither referenced nor mentioned.

While I am required to have regard to the decision of the COA, in this case that decision appears on its face to have considered the erroneous advice of City Planning Staff, acted upon it and addressed, as reasons for its decisions, matters related to variances that were not before the COA; those variances had been earlier granted and acted upon apparently without the COA's knowledge or observation.

On consent, the relevant conditions of TLAB Practice Direction 1, as applicable, are appropriate to attach.

DECISION AND ORDER

The decision of the Committee of Adjustment is set aside and the appeal is allowed.

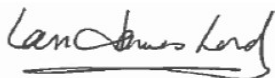
Consent to sever the subject property in accordance with the draft Reference Plan attached hereto as **Attachment A** is granted, and such consent is approved subject to the conditions identified in **Schedule A** following.

If difficulties arise in the implementation of this disposition, the TLAB may be spoken to.

Schedule A: Standard Consent Conditions

- (1) Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
- (2) Two copies of the registered reference plan of survey integrated with the Ontario Coordinate System and listing the Parts and their respective areas, shall be filed with City Surveyor, Survey & Mapping, and Technical Services.
- (3) Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.
- (4) Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the Planning Act, as it pertains to the conveyed land and/or consent transaction.

X

A handwritten signature in black ink that reads "Ian Lord". The signature is written in a cursive style and is positioned above a horizontal line.

Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

Attachment A

(Draft Reference Plan marked 'Preliminary')

PRELIMINARY

WESTDALE DRIVE (FORMERLY MIKJO AVENUE BY REG'D. PLAN 3829)
PIN 10235-0684(LT)

I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT.

PLAN 66R-

RECEIVED AND DEPOSITED

DATE: MARCH 7, 2016

DATE: _____

VALERIO G. PAPA
ONTARIO LAND SURVEYOR

REPRESENTATIVE FOR LAND REGISTRAR FOR THE LAND TITLES DIVISION OF THE TORONTO REGISTRY OFFICE (No. 66)

SCHEDULE OF PARTS				
PART	ALL OF LOT	PLAN	PIN. NO.	AREA (M ²)
1	243	2829	ALL OF 10235-0565(LT)	424.7
2				424.6

PLAN OF SURVEY OF
LOT 243
REGISTERED PLAN 3829
CITY OF TORONTO
(FORMERLY CITY OF NORTH YORK)



SCALE = 1:200m

GUIDO PAPA SURVEYING
A DIVISION OF J. D. BARNES LIMITED

METRIC: DISTANCES AND COORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

SURVEYOR'S CERTIFICATE:

- I CERTIFY THAT:
- THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
 - THE SURVEY WAS COMPLETED ON THE _____ DAY OF _____

DATE: MARCH 7, 2016

VALERIO G. PAPA
ONTARIO LAND SURVEYOR

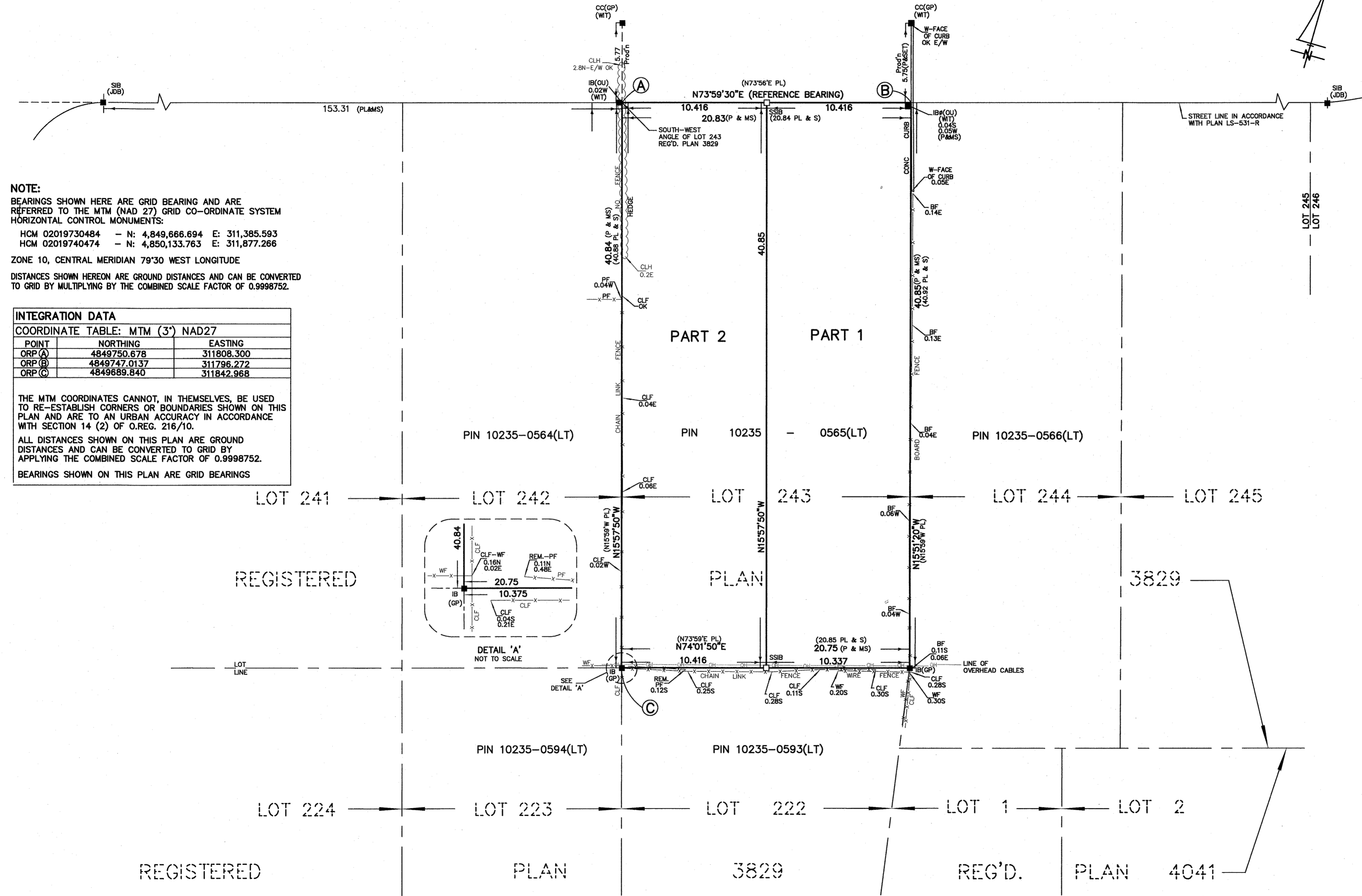
NOTE: BEARINGS SHOWN HEREON ARE ASTRONOMIC AND ARE REFERRED TO THE SOUTHERLY LIMIT OF WESTDALE DRIVE AS SHOWN ON PLAN LS-531-R, HAVING A BEARING OF N73°59'30"E

■	DENOTES	SURVEY MONUMENT FOUND
□		SURVEY MONUMENT PLANTED
SIB		STANDARD IRON BAR
IB		IRON BAR
CC		CUT CROSS
WT		WITNESS
OU		ORIGIN UNKNOWN
Ms		MEASURED
PL		REGISTERED PLAN 3829
P		PLAN LS-322-R
g		ROUND
P		SRPR BY G. PAPA, O.L.S. DATED SEPT. 29, 2014 (REF. 14-417)
S		H. C. SEWELL, O.L.S. (PLAN DATED NOV. 16, 1950)
GP		GUIDO PAPA, O.L.S.
BF		BOARD FENCE
CLF		CHAIN LINK FENCE
PF		PICKET FENCE
WF		WIRE FENCE

NOTE:
BEARINGS SHOWN HERE ARE GRID BEARING AND ARE REFERRED TO THE MTM (NAD 27) GRID CO-ORDINATE SYSTEM HORIZONTAL CONTROL MONUMENTS:
HCM 02019730484 - N: 4,849,666.694 E: 311,385.593
HCM 02019740474 - N: 4,850,133.763 E: 311,877.266
ZONE 10, CENTRAL MERIDIAN 79°30' WEST LONGITUDE
DISTANCES SHOWN HEREON ARE GROUND DISTANCES AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.9998752.

INTEGRATION DATA		
COORDINATE TABLE: MTM (3') NAD27		
POINT	NORTHING	EASTING
ORP (A)	4849750.678	311808.300
ORP (B)	4849747.0137	311796.272
ORP (C)	4849689.840	311842.968

THE MTM COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN AND ARE TO AN URBAN ACCURACY IN ACCORDANCE WITH SECTION 14 (2) OF O.REG. 216/10.
ALL DISTANCES SHOWN ON THIS PLAN ARE GROUND DISTANCES AND CAN BE CONVERTED TO GRID BY APPLYING THE COMBINED SCALE FACTOR OF 0.9998752.
BEARINGS SHOWN ON THIS PLAN ARE GRID BEARINGS



D.S.B. DRAWN
V.G.P. CHECKED
DATE: _____
Ref. No. 16-18-199

GUIDO PAPA SURVEYING
A Division of J.D. Barnes Limited

216 CHRISLEA ROAD, SUITE 501, WOODBRIDGE, ON L4L 8S5
T: (905) 264-2727 F: (905) 264-2728 www.jdbarnes.com