

DECISION AND ORDER

Decision Issue Date Tuesday, May 11, 2021

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): ALBERT SHOIHET

Applicant(s): ALBERT SHOIHET

Property Address/Description: 14 COXWELL AVE & 10R COXWELL AVE

Committee of Adjustment File

Number(s): 19 259487 STE 14 CO (B0115/19TEY)

TLAB Case File Number(s): 20 180742 S53 14 TLAB

Hearing date: Wednesday, March 3, 2021

DECISION DELIVERED BY C. KILBY

APPEARANCES

NAME	ROLE	REPRESENTATIVE
ALBERT SHOIHET	APPLICANT/APPELLANT	PETER GROSS
PAUL JOHNSTON	EXPERT WITNESS	

INTRODUCTION

This is an appeal brought by Albert Shoihet (**Appellant**) from a decision of the Deputy Secretary-Treasurer of the Toronto and East York Panel of the Committee of Adjustment (**COA**). The COA refused an application for consent to sever a portion of land known municipally as 10R Coxwell Avenue from 14 Coxwell Avenue, the subject property, for addition to 3 Rhodes Avenue.

The Toronto Local Appeal Body (**TLAB**) set a ‘virtual’ Hearing date for March 3, 2021 and the sitting was convened by way of the City’s Webex platform. In addition to the above-named individuals, a planner from Mr. Johnston’s office, Stephanie Matveeva, was in attendance. The City of Toronto did not participate in this Appeal and there were no other Parties or Participants in attendance.

BACKGROUND

The Appellant seeks consent to sever a parcel of land known municipally as 10R Coxwell Avenue from 14 Coxwell Avenue and add it to the adjacent property known municipally as 3 Rhodes Avenue (**Application**).

As explained in a letter from the Appellant’s legal counsel to the Deputy Secretary-General included in Tab D of Exhibit 1, 14 Coxwell Avenue and 10R Coxwell Avenue are considered one lot. The Appellant owns 99% of 14 Coxwell Avenue as a tenant in common with 9472207 Canada Inc., of which he is the sole shareholder and Director. The Appellant also owns 3 Rhodes Avenue, the land to which the severed parcel is proposed to be added.

The Appellant described the intent of this Application in his letter to the Deputy Secretary-General included in Tab D of Exhibit 1. The Appellant seeks to reorganize the “irregular” subject property to formalize the existing situation, which is that 10R Coxwell Avenue is accessed for parking by way of public laneway from Rhodes Avenue.

The COA, by decision mailed on July 28, 2020, refused consent to sever, primarily on the basis that the land division was premature.

At the Hearing, I advised that I had attended the site and the surrounding neighbourhood, as directed by City Council, and had reviewed the materials in the file.

MATTERS IN ISSUE

The issue in this Application is whether to grant consent to sever 10R Coxwell Avenue from 14 Coxwell Avenue and add it to 3 Rhodes Avenue. There are no associated variances sought in this Application and no development has been proposed for the lands under consideration as part of the Application before the TLAB.

JURISDICTION

A decision on an application for consent to sever is governed by the following:

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

The Appellant's planning evidence was provided by Paul Johnston, whom I qualified to provide professional expert opinion evidence in the area of land use planning on the basis of his credentials and experience. As the Application was unopposed, Mr. Johnston was the only expert witness before the TLAB.

A Document Book prepared by Mr. Johnston's office was entered into evidence as Exhibit 1. Mr. Johnston's Expert Witness Statement was not entered into evidence as an exhibit, save for two appendices: his Curriculum Vitae, which was entered as Exhibit 2, and his signed Acknowledgement of Expert's Duty Form 6, which was entered as Exhibit 3.

In oral testimony with reference to Exhibit 1, Mr. Johnston provided the basis for his opinion that this Application meets the requisite legislative and policy considerations and standards set out above under 'Jurisdiction,' and asked the TLAB to approve the Application.

Overview

With reference to the Draft Reference Plan at Tab E of Exhibit 1 (excerpted below), Mr. Johnston described the Application as being for the severance of Part 2 (conveyed), 10R Coxwell Avenue, from Part 1, 14 Coxwell Avenue (retained), to be donated and form a lot addition to Part 3, 3 Rhodes Avenue. Mr. Johnston's evidence was that the land proposed to be severed at 10R Coxwell Avenue (Part 2) is currently, and would continue to be, used as surface level parking.

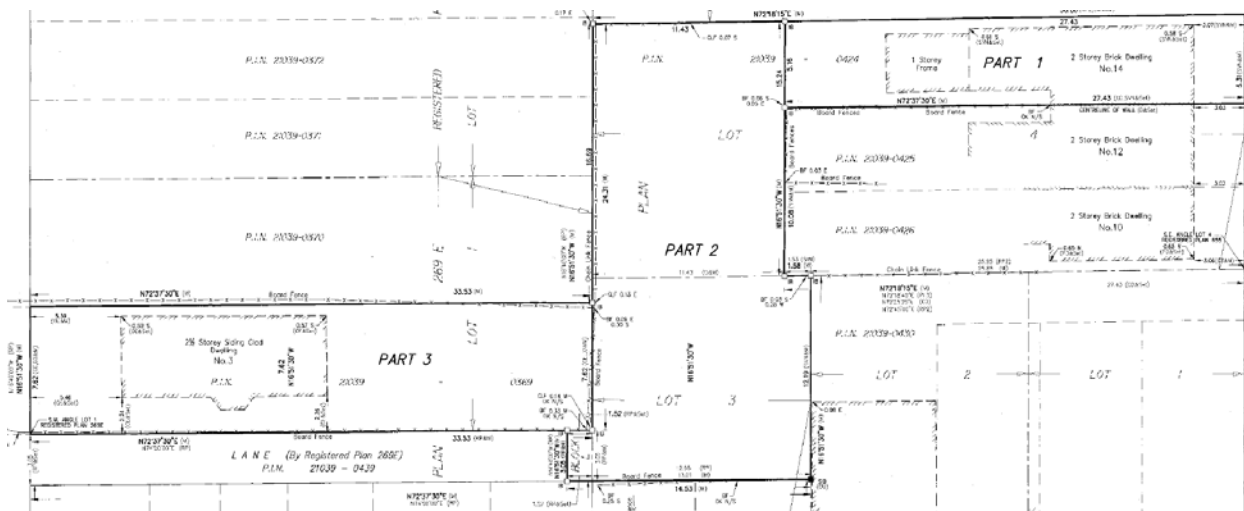


Image excerpt taken from Tab E of Exhibit 1.

Included at Tab J of Exhibit 1 is the Public Notice mailed by the COA on or before June 25, 2020, which set out the details of the Application. Mr. Johnston was not aware of any objections to the Application from any neighbours, including abutting property owners.

Consultation with City Departments

The Appellant consulted with City Planning staff prior to filing the Application with the COA. The Appellant's correspondence with Assistant Planner Kasia Kmiec is included at Tab F of Exhibit 1. In an email from Ms. Kmiec to the Appellant dated April 27, 2020, Ms. Kmiec advises that she has no concerns with reorienting the lots as proposed by the Appellant. She notes that her review was limited to the lot reconfiguration and did not apply to any future development of the property. Ms. Kmiec declined to prepare a report on the Application. Mr. Johnston testified that a report would usually involve an expression of concerns.

I asked for comment on the position of Urban Forestry with respect to this Application. The documentation submitted at Tab H of Exhibit 1 showed that Urban Forestry was not able to inspect the site due to restrictions related to COVID-19 and will withhold comments until able to conduct an inspection. Mr. Johnston's view was that as no construction has been proposed in the present Application, there would be no concerns from an urban forestry perspective.

Engineering and Construction Services sent a Memorandum to the COA dated March 10, 2020, included at Tab G of Exhibit 1. The Engineering and Construction Services department indicated no concerns with granting approval of the consent to sever, subject to the owners of 14 Coxwell Avenue satisfying the following condition:

Submit a revised draft Reference Plan of Survey to the Chief Engineer & Executive Director, Engineering & Construction Services, for review and

approval, prior to depositing in the Land Registry Office, showing the coordinate values of the main corners of the subject lands in a schedule on the face of the plan.

Mr. Johnston described the requested condition as “appropriate” and recommended that it be imposed in the event the consent is granted.

Zoning

No variances were identified as being required by this Application. Tab I of Exhibit 1 is the January 7, 2020 Notice of Zoning Bylaw Compliance for this Application confirming its compliance with the zoning bylaw.

Policy

It was Mr. Johnston’s view that the PPS is not engaged as no development is proposed in this Application. However, to the extent that the PPS values the efficient use of land and efficient land use patterns, Mr. Johnston pointed out that the public laneway from Rhodes Avenue is the only means of vehicular access to the 10R Coxwell Avenue (Part 2) lands, and as such, it is more efficient for the access to the parcel to be associated with Rhodes Avenue rather than Coxwell Avenue. Mr. Johnston’s opinion was that the absence of any conflict between the Application and the PPS means that the Application is consistent with the PPS.

Similarly, due to the extremely limited scope of the Application, Mr. Johnston was of the view that it conforms to the Growth Plan.

Mr. Johnston stated that there would be no detrimental impact to the functionality of the abutting properties resulting from the proposed severance, their access and function would be unchanged by the proposed severance, there are no built form impacts, and no construction is proposed.

Official Plan (OP)

The subject lands are designated in the City OP as *Neighbourhoods*. Mr. Johnston testified that there are no secondary plans or site- or area-specific policies that apply to these lands. The lands are also located within an “Avenues” overlay on the Urban Structure map (Map 2) in the OP. Mr. Johnston’s opinion is that the Application conforms to the policies of the OP, and specifically the policy direction concerning *Neighbourhoods*.

Mr. Johnston described the character of the area on the west side of Coxwell Avenue as low density residential, containing low rise residential built forms (typologies), including detached, semi-detached, and row house dwellings. There are commercial uses along the perimeter roads of the neighbourhood, and uses such as a community centre, a school and a place of worship, and a number of apartment building forms along Queen Street.

A photographic survey was done of the subject lands and the surrounding area within Mr. Johnston's Neighbourhood Study Area included at Tab C of Exhibit 1 (**NSA**). With reference to the photographs, Mr. Johnston noted that laneways and rear parking are a feature of the area. When I asked for particular examples of similar laneway access or rear parking to which I should have regard, Mr. Johnston indicated that there were additional examples obscured by trees on the aerial photograph of the NSA at Tab B of Exhibit 1. He highlighted a laneway between numbers 7 and 8 on the aerial photograph and noted that there is more rear yard parking on Coxwell Avenue because the lots are deeper and there is greater distance between Coxwell Avenue and Rhodes Avenue than between other streets in the NSA. The difficulty of parking on Coxwell Avenue was also cited as a reason for more rear yard parking in that area.

As to whether the Application respects the principle of maintaining physical stability and respecting and reinforcing the existing physical character of the neighbourhood, Mr. Johnston focused primarily on policy sections 4.1.5(a) and (b) in the OP and opined that the Application is consistent with other rear lot configurations and would not differ from the current arrangement in which 10R Coxwell Avenue is used for rear parking. The parcel would retain similar dimensions if the consent to sever is granted.

There were no other issues in terms of setbacks or landscaped open space as outlined in the development criteria for the *Neighbourhoods* designation in section 4.1.5 of the OP.

I asked Mr. Johnston whether the lot configuration for the subject lands was unusual in the area. With reference to section 4.1.5(h), Mr. Johnston suggested that the "L-shape" of the subject property contributes to the unique physical character of the neighbourhood. He stated that the lot shape is not directly related to the landscape or built form, but it is an element of the physical character of the neighbourhood. The Application seeks to reorient the "L-shape" to the parcel that fronts onto Rhodes Avenue and thus would preserve an existing feature of the lotting fabric of the area.

In terms of similar proposals in the neighbourhood, I was directed to the Summary of Committee Consent Approvals at Tab O of Exhibit 1. All of the five examples of consents granted had to do with easements or rights of way for vehicular access or parking. The closest example to the subject Application was a Committee of Adjustment consent decision for 158 Rhodes Avenue in which a parcel of land was retained for a vehicular right-of-way in favour of nearby properties. Mr. Johnston cited the highlighted decisions at Tab O as the most relevant examples of the Committee of Adjustment granting severances resulting in changes to lot configurations related to issues of vehicular and pedestrian access.

In Mr. Johnston's view, the Application complies with the OP's *Neighbourhoods* policies and the development criteria in Policy 4.1.5 and specifically a) and b) in that the existing pattern of streets, blocks and lanes would be maintained and the prevailing configuration of lots would be preserved if consent to sever is granted. There would be no change to the streetscape. In Mr. Johnston's view, the remaining development criteria and guidance under Policy 4.1.5 are not applicable. In his opinion, the

Application and resulting severance of the subject property, if granted, would continue to respect and reinforce the existing physical character of the neighbourhood.

Section 51(24) of the Planning Act

Mr. Johnston opined that a draft plan of subdivision is not required for the subject Application. With reference to his witness statement, Mr. Johnston reviewed the criteria listed in section 51(24) of the *Planning Act* and indicated his view that the Application is appropriate in light of its compliance with all relevant criteria, as follows:

- a) There is conformity with relevant Provincial plans.
- b) There is no issue of prematurity. Services are already available if a development is proposed in the future. Mr. Johnston asserts that there are no public policy objectives to be met or which are not met by the Application. The Application concerns the owner's private interests and does not engage prevailing public interest concerns.
- c) The Application conforms with the Official Plan and adjacent plans of subdivision. The Application fits with surrounding lotting fabric.
- d) Currently, the land is used for parking and will continue to be used for parking, which is a suitable use for the lands in question.
- e) Access to the land is via the Rhodes Avenue laneway, which is an appropriate means of providing ingress and egress to the subject lands.
- f) The dimension and shape of the proposed lot will not change substantially and there are no zoning issues arising from the Application. The lands can be efficiently used as parking.
- g) – m) Not at issue in this Application.

Mr. Johnston offered his professional opinion that the matters in s. 51(24) of the *Planning Act* have been appropriately considered and that a plan of subdivision is not required in this instance, that the Application represents good planning and recommended that the Application for consent be granted.

ANALYSIS, FINDINGS, REASONS

This Application seeks to adjust the lot lines between two properties in order to formally reflect the current use of the subject lands, which is surface level parking accessed via public laneway from Rhodes Avenue. No development or construction has been proposed and no associated zoning bylaw variances have been requested for this Application.

In order to grant the consent to sever, the TLAB must be satisfied that the Appellant has established compliance with the relevant policy and legislative criteria set out above under 'Jurisdiction.' I find that Mr. Johnston and Mr. Gross both presented a thorough and considered case to the TLAB in favour of granting the consent to sever.

Provincial Policy

The absence of a development proposal in this Application limits the applicability of the PPS and the Growth Plan. Mr. Johnston's opinion was that the Application promotes the efficient use of land, which represents policy consistency with the PPS, and that the Application does not conflict with the PPS or the Growth Plan. In his closing statement, Mr. Gross cited section 3(5)(b) of the *Planning Act*, which provides that a decision by the TLAB "shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be."

I accept Mr. Johnston's evidence that the proposed severance would represent an efficient use of land. If granted, the severance would result in 10R Coxwell Avenue being associated with 3 Rhodes Avenue, a parcel adjacent to the public laneway which offers the sole means of vehicular access to 10R Coxwell Avenue. In this respect, I find that the Application is consistent with the PPS. I also find that the Application does not conflict with the Growth Plan, as set out in section 3(5)(b) of the *Planning Act* cited above. Therefore, the Application meets the requirements of section 3 of the *Planning Act*.

Section 51(24) Criteria

I accept Mr. Johnston's opinion that a plan of subdivision is not required in this case. I find that the scope of the Application is so narrow that there are not likely to be any negative impacts on the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality. On the basis of the evidence presented and the scope of the Application, I find that the criteria in section 51(24) (d.1) and (g) to (m) are not applicable to this matter. With regard to the remaining criteria in section 51(24):

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the *Planning Act*

I find that the Application will not impact matters of provincial interest as referred to in section 2 of the *Planning Act*. There is no development proposed and no change in the use of the lands proposed to be severed.

- (b) whether the proposed subdivision is premature or in the public interest

Prematurity was a concern for the COA and a reason for the refusal to grant the consent. I accept Mr. Johnston's evidence that the Application is not premature. The severed lands will continue to be used for parking. In effect, the proposed severance will better organize an existing pattern of irregular parcels into two lots.

- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any

The OP requires development in *Neighbourhoods* to maintain their physical stability and to respect and reinforce the existing physical character of buildings, streetscapes and

open space patterns. Although no development is proposed in this Application, the TLAB must be satisfied that the proposed severance will conform to the OP. In terms of the development criteria of Policy 4.1.5 concerning *Neighbourhoods*, subsections (a), (b) and (h) were brought to the TLAB's attention as the most relevant to this Application. I accept that the remaining criteria under Policy 4.1.5 are not engaged.

Mr. Johnston identified the NSA demonstrating the geographic neighbourhood boundaries for the purposes of this Application. Mr. Johnston's evidence was that laneways and rear parking are a feature of the Neighbourhood. The NSA photographs in Exhibit 1 included aerial photographs showing some rear yard parking and public laneway access to parking. In particular, at Tab C, photographs 3, 10, 11 and 12 showed laneway and rear access to parking in the immediate area of the subject lands. Photos 25, 28 and 32 reflected laneways in the broader NSA. I was unable to determine whether the potential laneway parking access identified on the aerial photograph is a relevant example in this case.

Other Committee of Adjustment decisions brought to the TLAB's attention are not directly pertinent to the facts of the subject Application. Nevertheless, I found that they did show that rear yard parking and access for vehicles is a common condition in the neighbourhood and has been accommodated in different ways in the past. Therefore, on the basis of the evidence presented, I find that rear yard parking and laneway access to parking are existing physical characteristics of the neighbourhood.

I also find the proposed severance will have a negligible impact on the patterns of streets, blocks and lanes, and the prevailing size and configuration of lots in the neighbourhood. Although not directly addressed during the Hearing, I find based on the Draft Reference Plan that if the severance is granted, the retained lot at 14 Coxwell Avenue will be more consistent with the lot sizes and shapes of those found immediately south of the subject property. The newly formed lot at 3 Rhodes Avenue will be different from its immediate neighbours to the north in terms of dimensions and shape; however, no zoning variances are required for this Application. Moreover, the rear lot (10R Coxwell Avenue) will remain essentially unchanged if consent is granted.

Mr. Johnston presented limited evidence of other similar L-shaped lots in the NSA. He asserted in his evidence that the L-shaped lot on the subject lands contributes to the unique physical character of the geographic neighbourhood (4.1.5(h)). I do not accept this characterization. However, I do accept that if the severance is granted the existing L-shaped lot is not changing other than to reorient towards Rhodes Avenue from Coxwell Avenue. Therefore, I find that the existing pattern of blocks and lanes will effectively be preserved, and the prevailing size and configuration of lots will also be maintained.

Urban Forestry was unable to inspect the site and did not comment on the Application. I accept Mr. Johnston's evidence that there are no concerns from an urban forestry perspective because no construction or development is proposed for the lands in question.

There was no opposition from neighbours to the Application, and Mr. Johnston testified that there will be no adverse impact on the surrounding properties if the consent to sever is granted. City Planning staff, the City Engineering Department and a Zoning Examiner indicated that there were no concerns with the Application.

I find that the Application conforms to the OP and thereby upholds provincial policy as well.

(d) the suitability of the land for the purposes for which it is to be subdivided

I accept Mr. Johnston's evidence that the subject lands at 10R Coxwell Avenue are currently used for surface level parking and will continue to be used for parking. I find the land is suitable for the purpose for which it is to be subdivided.

(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

I accept Mr. Johnston's evidence that the existing laneway from Rhodes Avenue offers appropriate access to the subject lands.

(f) the dimensions and shapes of the proposed lots

I find that the Application satisfies this criterion. With reference to the Draft Reference Plan, if the consent to sever is granted, the retained lot at 14 Coxwell Avenue will be more similar in shape to its immediate neighbours to the south than is currently the case. The dimensions and shape of the rear lot to be added to 3 Rhodes Avenue will remain similar to what presently exists. The addition of the rear parcel to 3 Rhodes Avenue will not impact the streetscape and no associated variances have been requested.

In view of the reasons discussed above, and having weighed the evidence presented at the Hearing and considered it in the context of the relevant statutory framework, I find that this Application meets the requirements for consent to sever. I accept the condition suggested by the City Engineering Department and impose it as a condition of approval.

DECISION AND ORDER

The appeal is allowed and the COA decision is set aside. 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: Consent Conditions

The Consent Application is approved on Condition.

The TLAB has considered the provisions of Section 51(24) of the *Planning Act* and is satisfied that a plan of subdivision is not necessary. The TLAB therefore consents to the transaction as shown on the plan filed with the TLAB or as otherwise specified by this Decision and Order, on the condition that before a Certificate of Official is issued, as required by Section 53(42) of the Planning Act, the applicant is to fulfill the following conditions to the satisfaction of the Deputy Secretary-Treasurer of the Committee of Adjustment:

- (1) Confirmation of payment of outstanding taxes to the satisfaction of the Revenue Services Division, in the form of a statement of tax account current to within 30 days of an applicant's request to the Deputy Secretary-Treasurer of the Committee of Adjustment to issue the Certificate of Official as outlined in Condition 6.
- (2) Municipal numbers for the subject lots, blocks, parts, or otherwise indicated on the applicable registered reference plan of survey shall be assigned to the satisfaction of the Supervisor, Surveys, Engineering Support Services, Engineering and Construction Services.
- (3) Submit a revised Draft Reference Plan of Survey to the Chief Engineer & Executive-Director, Engineering & Construction Services, for review and approval prior to depositing in the Land Registry Office showing the coordinate values of the main corners of the subject lands in a schedule on the face of the plan.
- (4) One electronic copy of the registered reference plan of survey integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with, and to the satisfaction of, the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services.
- (5) One electronic copy of the registered reference plan of survey satisfying the requirements of the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services shall be filed with the Deputy Secretary-Treasurer of the Committee of Adjustment.
- (6) Prepare and submit a digital draft of the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) of the Planning Act if applicable as it pertains to the conveyed land and/or consent transaction to the satisfaction of the Deputy Secretary-Treasurer of the Committee of Adjustment.
- (7) Once all of the other conditions have been satisfied, the applicant shall request, in writing, that the Deputy Secretary-Treasurer of the Committee of Adjustment issue the Certificate of Official.

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(7) Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions.

X 

Christine Kilby
Panel Chair, Toronto Local Appeal Body

