

# DECISION AND ORDER

**Decision Issue Date**      Friday, May 20, 2022

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

Appellant(s): MIRANDA MASTRACCI

Applicant(s): FRANK DI GIORGIO

Property Address/Description: 339 Maple Leaf Drive

Committee of Adjustment File

Number(s): 21 112012 WET 05 CO

**TLAB Case File Number(s): 21 154225 S53 05 TLAB**

**Hearing date: October 08, 2021**

**Deadline Date for Closing Submissions/Undertakings:**

**DECISION DELIVERED BY Panel Member J.Tassiopoulos**

## REGISTERED PARTIES AND PARTICIPANTS

Appellant/ Owner:                      MIRANDA MASTRACCI

Appellant's Legal Rep./ Applicant FRANK DI GIORGIO

Participant                                RUDY CARNEIRO

Party (TLAB)                              MAURO MASTRACCI

## INTRODUCTION & BACKGROUND

On April 29, 2021, the City of Toronto (City) Committee of Adjustment (COA) considered written submissions relating to the application and refused the Consent Application with the COA file number B0013/21EYK, for the property located at 339 Maple Leaf Drive. The consent requested was to sever a portion of the subject property

(Part 3 from Parts 1 and 2) for the purpose of conveying it to the existing Part 4 of the severed property.

The subject property is located in the York South-Weston and is designated *Neighbourhoods* in the City Official Plan (OP) and zoned RD under Zoning By-law 569-2013.

The COA's refusal of the consent was appealed to the Toronto Local Appeal Body (TLAB) by the Owner, Ms. Miranda Mastracci, on May 13, 2021, and the TLAB issued a Notice of Hearing setting a Hearing Date for October 8, 2021.

In attendance at the Hearing were:

- Frank Di Giorgio, Representative for the Owner;
- Mauro Mastracci, Owner/Appellant;
- Rudy Carneiro, Participant; and,
- Irene Leslie, Participant.

I advised, as per Council direction, that I had visited the site and surrounding neighbourhood and reviewed the pre-filed materials in preparation for the Hearing, but it was the evidence to be heard that was of importance.

Mr. Di Giorgio noted at the beginning of the Hearing that he would be taking part as a Representative and also would be providing evidence during the Hearing. I confirmed that the TLAB Rules and Procedures, Section 14.3 allows for this and I indicated during the Hearing that he would be allowed to provide evidence but not expert evidence.

There were no Parties or Participants present in opposition to the Application.

## **MATTERS IN ISSUE**

This is an appeal of the COA's refusal of the requested consent to sever. Being a *de novo* Hearing, the TLAB must be satisfied that the applicable policy and the consent to sever meet the criteria set out in s. 51(24) of the Act.

### **THE CONSENT REQUESTED:**

To obtain consent to sever the lot for the purpose of a lot addition.

#### **Retained - Parts 1 & 2**

Parts 1 & 2 will have a combined lot area of 1 559.9 m<sup>2</sup>. The existing detached garage will be maintained.

#### **Conveyed - Part 3**

Part 3 has a lot area of 295.6 m<sup>2</sup> and will be added to the holdings of the north abutting property known as 339 Maple Leaf Drive (Part 4). The existing dwelling will be maintained.

## **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**

### **Owner Mauro Mastracci**

Mr. Mastracci provided an overview of his purchase of the subject property:

- Purchased the property in May 2020 with the intention of severing the lot because it had a frontage of 100 feet (approx. 30m) and submitted an application to the COA to sever the lot down the middle, on July 27, 2020;
- COA requested that plans be provided for the house to be built on the severed lot even though the resulting lot widths would be 50 feet wide and in compliance with zoning. The plans for the existing house on the lot to be retained;
- He provided the drawings for both in order to process the application and indicated that there were no variances sought for these plans;
- During the application process and the process for closing of the purchase of the subject property it was discovered that there was an application in 1980 that indicated the lot had already been severed (Exhibit #3).
- COA asked that proof of this approved severance be provided, and this proof was submitted; having proven the severance approval he proceeded with completing the purchase of the property in September 2020;
- The purchase of the property was in his name, but he asked that his legal representative ensure a separate title for each part of the severed lot, one in his son's and one in his daughter's name;
- Having completed this, he sold the house on 339 Maple Leaf Drive to Mr. Rudy Carneiro; at the closing of the sale in January 2021, he was advised by Mr. Carneiro the lot sold to him did not include the complete depth of the property and that the rear portion (Exhibit #1 – Survey - Part 3) was not included.

- The severance that occurred in 1980 only included what is shown on the Survey as Part 1 and Part 4 but did not include the lands at the rear for Parts 2 and 3. At the time the lands at the rear were still part of an expropriation that had originally taken place by the City. These lands were given back eventually but Parts 2 and 3 were returned to Part 1;
- He committed to Mr. Carneiro that he would correct this issue through the COA so that Parts 3 and 4 are associated with each other, in accordance with the sale of the property;
- With respect to the process, it was indicated that the application could be reviewed through delegated authority, by the Secretary-Treasurer of the COA, Phil Carvalino, and would not be heard publicly by the COA. The application was refused; and,
- He explained that there was confusion with respect to the application because there was no new development being proposed for Mr. Carneiro's property, all he was trying to achieve was the severing of Part 3 from Parts 1 and 2 and to re-attach Part 3 with Part 4 and make Mr. Carneiro's property whole and would reflect the original plan of subdivision.

**Owner / Appellant Representative Frank Di Giorgio**

Mr. Di Giorgio explained that the subject property was owned in co-tenancy with Part 1 owned by the earlier owner's wife and Part 4 was owned by him. Upon the passing away of the earlier owner, the whole property was then, as a result of survivorship, owned by his surviving spouse and that is how the resulting L-shape of Parts 1, 2 and 3 has taken place. Because of this, the application to sever was made to sever it right down the middle of the subject property.

Mr. Di Giorgio noted the purpose of the application was misunderstood and that the refusal of the consent did not take into consideration that the severance requested was technical in nature. He explained that the application was unique and should have been considered under section 50 (3)(a.1) but instead was considered under section 53 of the *Planning Act* which is how the delegation of authority to the Secretary-Treasurer considered the application. Because of this process, Mr. Mastracci was required to submit drawings of the severed property even though the resulting lot frontage and size were in compliance with the zoning requirements.

The process resulted in the application being circulated with a misunderstanding by reviewing authorities? that this was new lot creation when indeed it was not but rather a severance so that Part 3 would be combined with Part 4. He explained that the Toronto Regional Conservation Authority (TRCA) had initially misunderstood that this was a new lot being created and recommended refusal to the COA on April 16, 2021. The solicitors for the TRCA, in a letter to TLAB and Mr. Di Giorgio, indicated that they understood that the severance of Part 3 was not to create a new lot but rather to merge it with Part 4, had no objection as it wasn't a new independent lot.

Mr. Di Giorgio pointed out that both the City legal representatives and the TRCA were not present at the Hearing in opposition to the application.

Mr. Di Giorgio explained that the lot sizes proposed are in conformance with OP policies because the consent results in residential lots that are of a width consistent with the other 50 lots found in the neighbourhood.

He explained that the refusal of the application on suitability of the resulting lot with respect to purpose and dimensions or shape was not applicable because a new lot for development was not being proposed. The severance is meant to detach Part 3 from Parts 1 and 2 of the subject property so it can be attached to Part 4. There has never been any intention to create a new independent lot. If he had been given the opportunity to appear before the COA, he would have been able to clarify the consent requested and that there may not have been a need for the refusal.

The lot addition proposed is not to allow for increased development potential but rather to rectify or remedy the legal property lines with respect to the subject property. He contended that this change should have been done through a request to the City

#### **Participant Irene Leslie**

Ms. Leslie followed Mr. Mastracci because she had information with respect to the rear of the properties indicating that she had been living on the abutting property of the subject property and shared some history with respect to the rear of the lots along Maple Leaf Drive:

- When her family originally purchased the house in the 1970's there the deep lot backed onto an open ravine area that extended east to west along the rear of all the properties on the southern side of Maple Leaf Drive;
- In the late 1970's they received notice that the rear of the properties would be expropriated for servicing works and piping of the ravine;
- This resulted in the shortened lot depths and when the City work was completed, the expropriated land was offered back to the property owners to purchase at market value in the 1980's;
- She suggested that because the severance for the subject property occurred in 1980, the purchase of the previously expropriated lands may have resulted in both Parts 2 and 3 being attached to Part 1;

#### **Participant Rudy Carneiro**

Mr. Carneiro did not provide any evidence during the Hearing; he confirmed that he was the purchaser of 339 Maple Leaf Drive (Part 4) and was present to observe the Hearing.

## **ANALYSIS, FINDINGS, REASONS**

I understand that there had been ongoing confusion and misunderstanding concerning what was being sought by the application, namely, to sever a portion of the lot (Part 3 – Part 15, Plan 64R-9776 - from Parts 1 and 2) and reattach it to the severed property indicated as Part 4 (Exhibit #1, Survey, Part 2, Plan 64R-8826).

After hearing the evidence and reviewing the exhibits provided, it appears to be a case of Mr. Mastracci wanting to correct a severance that he earnestly felt included the entire depth of the present subject property only to find out that through a confluence of oversights over the past five decades the severed part of his property he thought he had sold was indeed missing a portion. He is now trying to correct this issue and has, unfortunately, had to endure a process that has unnecessarily complicated a matter that should have been simply addressed and not required the appeal and resulting Hearing.

Mr. Di Giorgio contended during the Hearing that the process pursued concerning the application was incorrect and should have been addressed through Section 50 of the *Planning Act* and not Section 53 as was undertaken by the COA Secretary-Treasurer. Given that the only reason the application appears before the TLAB is that it is an appeal of a COA Decision. I have considered the reasons for the refusal in the context of the reasons provided, that the application does not satisfy the requirements of Section 51(24) of the *Planning Act* for the following reasons:

- The proposed land division is premature.
- The proposed land division does not conform to the policies of the official plan.
- The suitability of the land for the purposes for which it is to be subdivided has not been demonstrated.
- The suitability of the dimensions and shapes of the proposed lots has not been demonstrated.

### **Proposed Land Division is Premature**

It is difficult to understand how this assessment could be given with respect to the consent requested: “*To obtain consent to sever the lot for the purpose of a lot addition.*” I do not find it is premature and the survey exhibit provided along with the evidence provided by Mr. Mastracci, Ms. Leslie, and Mr. Di Giorgio that these are existing Parts of a large lot that have been recombined in a way that does not reflect the original intent of the severance. The fact that Mr. Mastracci wants to sever the part of the lot (Part 3) so that it can then be reattached or conveyed to the lot (Part 4) indicates that it will not create a new lot that is independent of the existing severed lots. The proposed land division is not premature with the condition and understanding that the severance is only for the purpose of attaching the severed Part 3 to the adjacent Part 4 on the subject property.

### **Proposed Land Division Conformance to OP Policies**

There is nothing to suggest that the severance to add or attach the severed part to a legal property in terms of designation and in terms of frontage with respect to zoning would somehow not be in conformance with the OP. Simply put, the objective of the Consent requested is to make Mr. Carneiro's property whole and for Mr. Mastracci to meet his obligation to him and ensure the severed Part 3 is reattached to Part 4. There is nothing to suggest that this change would not be in conformance with OP policies and there were no representatives from the City of Toronto or the TRCA to indicate otherwise in attendance at the Hearing.

### **Suitability of the Land for the Purposes for Subdivision**

As was described by both Mr. Mastracci and Mr. Di Giorgio during the Hearing, the purpose of the severance was to convey Part 3 to Part 4 as per the commitment to Mr. Carneiro. I am satisfied that this is the nature of the consent requested.

### **Suitability of the Land Dimensions and Shape**

Again, as was described by both Mr. Mastracci and Mr. Di Giorgio during the Hearing, the purpose of the severance was to convey Part 3 to Part 4 and not to create a new lot and to meet the commitment made to Mr. Carneiro. I am satisfied that the conveyance of Part 3 to Part 4 does demonstrate that the severance requested is suitable.

## **DECISION AND ORDER**

The refusal by the Committee of Adjustment of the consent to sever dated April 29, 2021 is set aside. The following consent is authorized subject to the conditions listed below:

### **THE CONSENT REQUESTED:**

To obtain consent to sever the lot for the purpose of a lot addition.

#### **Retained - Parts 1 & 2**

Parts 1 & 2 will have a combined lot area of 1 559.9 m<sup>2</sup>. The existing detached garage will be maintained.

#### **Conveyed - Part 3**

Part 3 has a lot area of 295.6 m<sup>2</sup> and will be added to the holdings of the north abutting property known as 339 Maple Leaf Drive (Part 4). The existing dwelling will be maintained.



**Conditions**

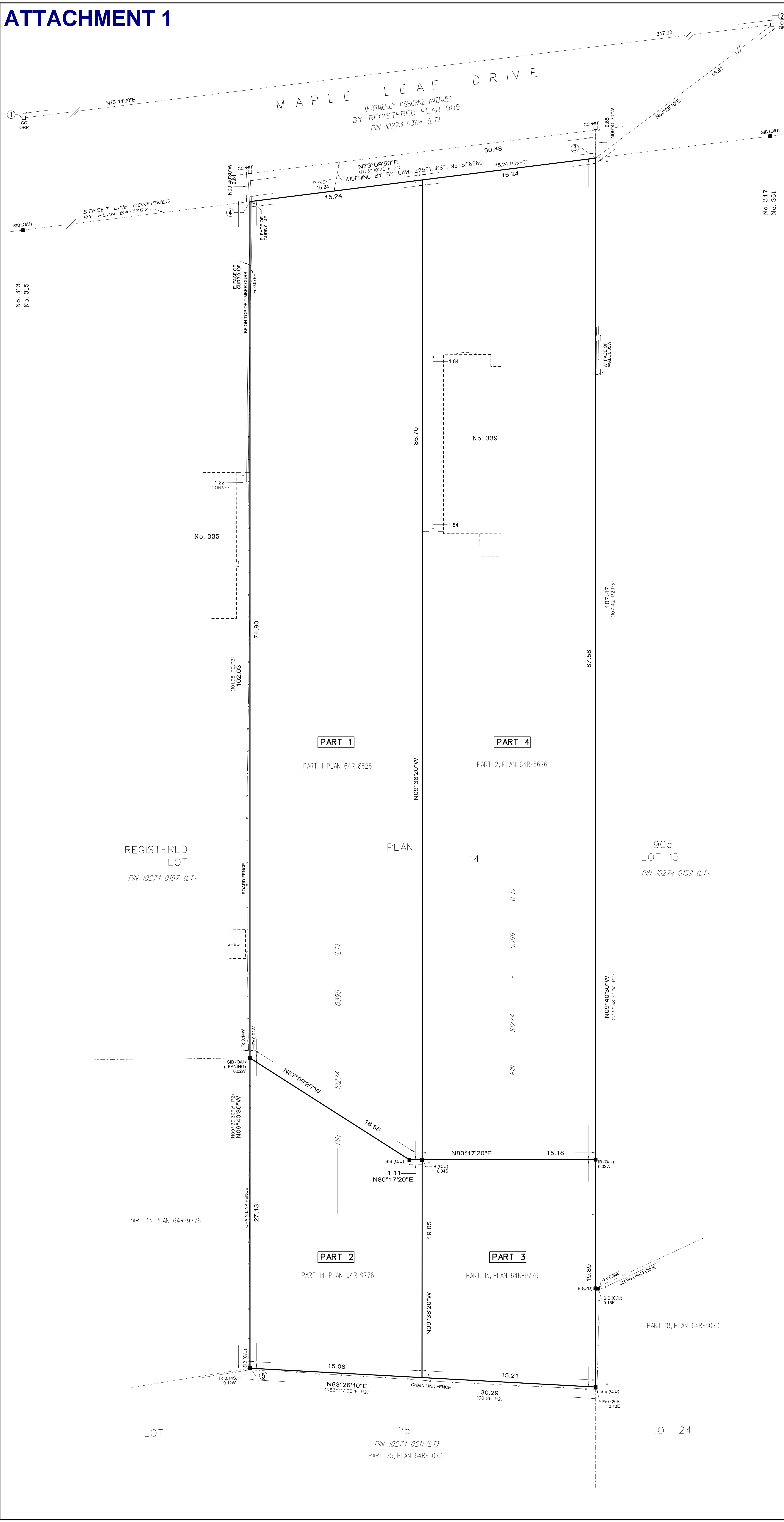
1. The proposed severance shall be in accordance with the Survey attached and dated December 17, 2020 and provided as **Attachment 1** to this Decision; and,
2. The consent is **ONLY** for the severed Part 3 (Part 15, Plan 64R-9776) to be conveyed and combined with Part 4 (Part 2, Plan 64R-8626), for the purpose of this Decision.

X

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J.Tassiopoulos  
Panel Member, Toronto Local Appeal Body

# ATTACHMENT 1



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

**PLAN 66R-**

RECEIVED AND DEPOSITED: \_\_\_\_\_

DATE: \_\_\_\_\_

**DRAFT**

HELMUT PILLER  
Ontario Land Surveyor

REPRESENTATIVE FOR LAND REGISTRAR FOR THE LAND TITLES DIVISION OF TORONTO No. 66

**SCHEDULE**

PART	LOT	PLAN	PIN	AREA (m <sup>2</sup> )
1				1,217.1
2	PART OF LOT 14	905	ALL OF PIN 10274-0395 (LT)	342.8
3				295.6
4			ALL OF PIN 10274-0396 (LT)	1,312.5

PLAN OF SURVEY OF  
**PART OF LOT 14**  
**REGISTERED PLAN 905**  
**CITY OF TORONTO**  
FORMERLY CITY OF NORTH YORK

SCALE 1 : 150

AKSAN PILLER CORPORATION LTD.

- LEGEND:**
- DENOTES SURVEY MONUMENT FOUND
  - DENOTES SURVEY MONUMENT PLANTED
  - IB DENOTES IRON BAR
  - SIB DENOTES STANDARD IRON BAR
  - SSIB DENOTES SHORT STANDARD IRON BAR
  - CC DENOTES CUT CROSS
  - CP DENOTES CONCRETE PIN
  - WT DENOTES WITNESS MONUMENT
  - O/U DENOTES ORIGIN UNKNOWN
  - N DENOTES NORTH
  - S DENOTES SOUTH
  - E DENOTES EAST
  - W DENOTES WEST
  - Fc DENOTES FENCE
  - CLF DENOTES CHAIN LINK FENCE
  - BF DENOTES BOARD FENCE
  - PLAN DENOTES REGISTERED PLAN 905
  - P1 DENOTES PLAN BA-1767
  - P2 DENOTES PLAN 64R-9776
  - P3 DENOTES PLAN 64R-8626
  - LYON DENOTES O.R. LYON, O.L.S. (July 18, 1955)
  - ORP DENOTES OBSERVED REFERENCE POINT

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

**BEARING NOTE:**  
BEARINGS ARE MTM GRID, DERIVED FROM GNSS OBSERVATIONS, USING A REAL TIME KINEMATIC SERVICE, ON MONUMENTS 1 & 2, SHOWN HEREON, HAVING A BEARING OF N73°14'00"E, AND ARE REFERRED TO THE CENTRAL MERIDIAN OF MTM ZONE 10 (79°30' WEST LONGITUDE) NAD83 (CSRS) (2010).

**NOTES:**  
DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.9999.

POINT ID	NORTHING	EASTING
1 ORP	4841378.30	305592.60
2 ORP	4841470.01	305896.99
3	4841442.61	305839.58
4	4841433.78	305810.41
5	4841333.22	305827.56

COORDINATES ARE TO URBAN ACCURACY AS IN SEC. 14(2) OF O. REG. 216/10, AND CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN.

DECEMBER 17, 2020  
DATE

HELMUT PILLER  
Ontario Land Surveyor

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CALC.: MU DRAWN: LP CHECKED: HP  
REFERENCE No.: 20-20-13783-RPLAN