



# MANITOULIN PLANNING BOARD

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July 28, 2022

## MINUTES OF PLANNING BOARD MEETING - July 26, 2022

At a Meeting of the Manitoulin Planning Board held at the Planning Board Office, Gore Bay, Ontario, on Tuesday, July 26<sup>th</sup>, 2022, the following Members of Planning Board were present:

- |    |             |    |              |
|----|-------------|----|--------------|
| 1. | L. Hayden   | 5. | T. Mackinlay |
| 2. | D. McDowell | 6. | R. Brown     |
| 3. | E. Russell  | 7. | D. Head      |
| 4. | D. Osborne  | 8. | I. Anderson  |

Regrets: R. Stephens, K. Noland

Also in attendance for the in-person meeting were:

- D. Banger, applicant, File No. B12-22;
- D. & S. Domic, applicants, File No. B20-22;
- G. Hunter, interested party, File No. B20-22;
- D. and J. Wright, applicants, File No. B22-22;
- T. Sasvari, reporter, Manitoulin West Recorder.

There were no other interested parties or members of the general public or press in attendance.

The Meeting was called to Order at 7:01 P.M. by Chair L. Hayden, who welcomed all present.

The Chair asked if there were any Board Members who wished to declare a conflict of interest with any of the items listed on the agenda or having to do with the previous Board Meeting on June 28<sup>th</sup>, 2022.

There were no conflicts declared.

### 1. ORDER OF BUSINESS

The Chair requested the adoption of the order of business,

#### MOTION

It was moved by D. McDowell and seconded by D. Osborne that the Order of Business be adopted,  
- Carried

### 2. MINUTES OF PREVIOUS BOARD MEETING - June 28<sup>th</sup>, 2022

The Chair announced that the Minutes of the electronic Board Meeting held on June 28<sup>th</sup>, 2022 had been circulated to the Board Members and requested that any errors or omissions be stated.

There were none.

#### MOTION

A motion was moved by R. Brown and seconded by I. Anderson that the Minutes of June 28<sup>th</sup>, 2022 be adopted,  
- Carried.

### BUSINESS ARISING FROM THE MINUTES OF THE PREVIOUS BOARD MEETING - June 28<sup>th</sup>, 2022

There was none.

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July 26, 2022 - Continued

3. VARIABLE EXPENDITURES

There were no questions of the variable expenditures as circulated.

MOTION

It was moved by D. Head and seconded by D. McDowell that the variable expenditures be accepted as presented,  
- Carried.

4. PRESENTATION OF APPLICATIONS FOR CONSENT

The Chair announced that the application for consent to sever would now be heard.

Note: For the sake of continuity the details and decisions of the presentations will be so recorded in the usual fashion toward the end of the Minutes.

5. GENERAL, REGULAR AND NEW BUSINESS

a) Natural Heritage System (NHS)

The Secretary-Treasurer reported that there was no new information for the Board to consider at this time. Staff Members reviewed a draft report received from North-South Environmental, the firm hired to review the policies and mapping of a (draft) Natural Heritage System prepared by the Manitoulin Planning Board, during an electronic meeting on March 23<sup>rd</sup>, 2022. J. Diebolt, staff member, has been trying to find some time to work on this project and prepare a Draft NHS to be presented/reviewed by the Planning Board. An update will be provided to the Board once he has a DRAFT prepared.

b) Zoning By-law No. 96-01 for the Unincorporated Townships of Robinson and Dawson - Update

The Secretary-Treasurer reported that there was no new information for the Board to consider at this time. J.L. Richards and Associates Ltd. is to provide a 2<sup>nd</sup> Draft copy of the Zoning By-law for review. When this has been received, it will be available for the Board to review and provide comments. The statutory Public Meeting is anticipated to be late August 2022.

c) August 2022 Board Meeting

The Secretary-Treasurer explained that there are five (5) Tuesdays in August. She asked if the Board wished to consider the next Board Meeting on the regular 4<sup>th</sup> Tuesday, August 23<sup>rd</sup>, 2022 or on August 30<sup>th</sup>, 2022 being the 5<sup>th</sup> Tuesday of the month, and if they preferred an electronic meeting or an in-person meeting.

The Board were in agreement for the next Regular Planning Board Meeting to be held on the 5<sup>th</sup> Tuesday being August 30<sup>th</sup>, 2022 as an in-person meeting.

The time now being 9:57 p.m., and in accordance with the Procedural By-law, the Secretary-Treasurer reported that there would need to be a motion to extend the meeting on-half hour to finish the business on the Board Agenda.

The following motion resulted:

MOTION

It was moved by T. Mackinlay and seconded by D. Osborne that the Planning Board Meeting be extended an additional one-half hour,  
- Carried Unanimously.

6. IN CAMERA SESSION

The Chair requested the Board to go In Camera to review the Minutes of the In Camera Session held on April 26<sup>th</sup>, 2022.

MOTION

It was moved by I. Anderson and seconded by E. Russell that the Board go In Camera at 9:58 p.m. to review the Minutes of the In Camera Session held on April 26<sup>th</sup>, 2022.

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July 26, 2022 - Continued

The Board Members were provided with a copy of the Minutes from the Closed in Camera Session, held on Tuesday, April 26<sup>th</sup>, 2022.

The Minutes were accepted as information; there were no decisions or motions made in Camera.

MOTION

It was moved by R. Brown and seconded by D. McDowell that the Board rise from the In Camera session at 10:09 p.m., - Carried Unanimously.

MOTION

It was moved by I. Anderson and seconded by D. Osborne that the Minutes of the In Camera Session held on April 26<sup>th</sup>, 2022 be adopted as presented, - Carried Unanimously.

PRESENTATION OF APPLICATION FOR CONSENT TO SEVER

The Chair announced that the purpose of this phase of the meeting is:

- (a) to consider applications for consent under Section 52 of the Planning Act,
- (b) to make decision in regard to the applications scheduled to be heard, and, explained that this phase is open to the public and any interested parties will be given the opportunity to speak in support or oppose an application.

The Chair then asked if any Board Members have or wish to declare a "Conflict of Interest", at this meeting or previous meeting. There were none.

Following is the list of Applications for Consent considered at this meeting.

	<u>Moved By</u>	<u>Seconded By</u>
1. B12-22	D. Head	R. Brown
	** That this application be <u>refused</u> , - Carried. (See Note Below)	
2. B14-22	D. McDowell	R. Brown
3. B15-22	I. Anderson	D. McDowell
	** That this application be <u>deferred</u> , - Carried.	
4. B16-22 to B18-22	D. Head	E. Russell
5. B19-22	D. McDowell	D. Osborne
6. B20-22	T. Mackinlay	I. Anderson
7. B21-22	D. Head	E. Russell
8. B22-22	R. Brown	D. Osborne
9. B23-22 and B24-22	D. Osborne	D. Head

\* It was moved and seconded that the above applications be conditionally approved, subject to all conditions being fulfilled as stated in the Decision, - Carried.

The above motion applies to all applications excepting B12-22 and B15-22.

NOTE: File No. B12-22 - Recorded Vote

MOTION

In consideration of the information presented to date, including the policies of the Provincial Policy Statement 2020 and the Official Plan for the District of Manitoulin, a motion was made by D. Head and duly seconded by R. Brown that the application be refused, - Carried.

IN FAVOUR OF MOTION	OPOSED TO MOTION
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L. Hayden  
D. Osborne  
T. Mackinlay  
R. Brown  
D. Head  
I. Anderson

D. McDowell  
E. Russell

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Application File No.: B12-22 No. of Members Present: 8  
Date of Decision: [May 24, 2022 - Deferred] [June 28, 2022 -Deferred] July 26, 2022  
Location of Property: Part Lots 14 and 15, Conc. I, Being Part 2, Plan 31R-059 excepting Part 1, Plan 31R3141, Township of Sheguiandah, Municipality of Assiginack, District of Manitoulin

### DECISION

The purpose of this application made under Section 53(1) of the Planning Act by Dene Banger and Frances Boegli is to provide for the creation of a new lot having a frontage of ±366 M. on Bidwell Road, a maintained township road, and an average depth of ±61 M. thereby containing an area of ±2.9 Hec. The proposed new lot is surveyed as Part 1, Plan 31R-3870. According to the application there are no structures on this land.

The land to be retained has a frontage of ±508 M. on Bidwell Road, a maintained township road and an average depth of ±83 M., thereby containing an area of ±4.8 Hec. According to the application, this land contains the applicants' dwelling.

There have been three (3) previous applications for Consent to Sever involving the subject land. File No. B48-06 created a new lot surveyed as Part 1, Plan 31R-3141, which was a resubmission of File No. B41-01 which lapsed when conditions of consent approval were not fulfilled within one year as required under the Planning Act.

In 2011 by File No. B42-11 the creation of a new lot was proposed, which also lapsed when conditions of consent approval were not fulfilled within one year as required under the Planning Act. The current application (File B12-22) is a resubmission of File B42-11.

Access is via existing entrances, #525 and #653 Bidwell Road, a maintained township road.

The subject land has been designated Rural Area and zoned Agricultural. An amendment to the Zoning By-law No. 80-20 approved by By-law No. 2012-11, permits a non-farm related use in an Agricultural Zone within the proposed severed land. Non-farm related rural residential uses are proposed to continue.

The application was circulated on August 13<sup>th</sup>, 2021 to the Wiikwemkoong Unceded Territory and to the United Chiefs and Councils of Mnidoo Mnising (UCCMM), as per Official Plan Policy F.5 - Consultation and Engagement.

John Manitowabi, Wiikwemkoong Unceded Territory, advised via email that they have no comments with the application to sever.

Saul Bombery, UCCMM, advised via email on that they have reviewed the information and that they have no comments to submit at this time.

Services consist of private well and private individual septic system. Private well and private individual septic system are proposed for the new lot.

The Public Health Sudbury and District had advised previousl (File No. B42-11) that they have no concerns and that the severed and retained portions would appear to be capable of supporting the installation of a septic tank and tile bed system.

Official Plan (2018) - Rural Area - under Policy E.2.3. - PRIVATE WATER AND SEWAGE SERVICES - under 6. states:

*'Potable water for new development will be provided in accordance with the Province's guidelines.'*

The Provincial D-5-5 Guidelines require a minimum flow rate of 13.7 litres/per minute of potable water to be available for a permanent (year round) residential use.

There is a licenced Aggregate Site, No. 616921, located to the south/west within Lot 1, Conc. A.

The Provincial Policy Statement 2020, Section 3.0 - Protecting Health and Safety states:

*'Development shall be directed away from areas of natural or human-made hazards where there is an unacceptable risk to public health or safety or of property damage, and not create new or aggravate existing hazards.'*

The Provincial Policy Statement 2020, Section 2.5 - Mineral Aggregate Resources states under: 2.5.1

*'Mineral aggregate resources shall be protected for long-term use and, where provincial information is available, deposits of mineral aggregate resources shall be identified.'*

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Application File No. B12-22 - continued  
May 24, 2022

2.5.2.1

*'As much of the mineral aggregate resources as is realistically possible shall be made available as close to markets as possible.'*

*'Demonstration of need for mineral aggregate resources, including any type of supply/demand analysis, shall not be required, notwithstanding the availability, designation or licensing for extraction of mineral aggregate resources locally or elsewhere.'*

2.5.2.2

*'Extraction shall be undertaken in a manner which minimizes social, economic and environmental impacts.'*

2.5.2.3

*'Mineral aggregate resource conservation shall be undertaken, including through the use of accessory aggregate recycling facilities within operations, wherever feasible.'*

2.5.2.4

*'Mineral aggregate operations shall be protected from development and activities that would preclude or hinder their expansion or continued use or which would be incompatible for reasons of public health, public safety or environmental impact. Existing mineral aggregate operations shall be permitted to continue without the need for official plan amendment, rezoning or development permit under the Planning Act. Where the Aggregate Resources Act applies, only processes under the Aggregate Resources Act shall address the depth of extraction of new or existing mineral aggregate operations. When a license for extraction or operation ceases to exist, policy 2.5.2.5 continues to apply.'*

2.5.2.5

*'In known deposits of mineral aggregate resources and on adjacent lands, development and activities which would preclude or hinder the establishment of new operations or access to the resources shall only be permitted if:*

- a) resource use would not be feasible; or*
- b) the proposed land use or development serves a greater long-term public interest; and*
- c) issues of public health, public safety and environmental impact are addressed.'*

2.5.3.1

*'Progressive and final rehabilitation shall be required to accommodate subsequent land uses, to promote land use compatibility, to recognize the interim nature of extraction, and to mitigate negative impacts to the extent possible. Final rehabilitation shall take surrounding land use and approved land use designations into consideration.'*

2.5.3.2

*'Comprehensive rehabilitation planning is encouraged where there is a concentration of mineral aggregate operations.'*

2.5.3.3

*'In parts of the Province not designated under the Aggregate Resources Act, rehabilitation standards that are compatible with those under the Act should be adopted for extraction operations on private lands.'*

The Official Plan (2018) under Policy D.8.2 MINERAL AGGREGATE RESOURCES states:

1. *'Mineral aggregate resources will be protected for long-term use. As much of the mineral aggregate resources as is realistically possible will be made available as close to markets as possible.'*
- 2.

*The following policies apply to Mineral Aggregate Resources:*

*2. Development proposals in close proximity to licenced aggregate extraction areas will be evaluated in terms of potential incompatibilities and addressed accordingly in consultation with the Province. Pertinent information regarding surface and groundwater, dust, vibration, noise, traffic routes in connection with the licenced aggregate extraction area, and buffering will be considered to ascertain the effect these existing factors will have on the proposed new development. Residential and institutional development within 300 metres of mineral aggregate resource areas and licenced pits will generally not be permitted. Proposed residential or institutional development within these areas will be supported by studies that demonstrate that any land use conflicts will be fully mitigated.'*

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Application File No. B12-22 - continued  
May 24, 2022

The Ministry of the Environment and Climate Change (MOECC) D-6 Series Guidelines, Under Section 1.2.4. - Other Facilities and Section 4.3 - Recommended Minimum Separation Distances: recommends that residential and institutional development within 300 metres of mineral aggregate resource areas and licenced pits will generally not be permitted. Proposed residential or institutional development within these areas will be supported by studies that demonstrate that any land use conflicts will be fully mitigated. i.e. feasibility study.

The subject land falls within the The MOECC D-6 Series Guidelines 300 metre buffer of the aggregate site.

As part of the preliminary review technical advise was requested from the Ministry of Northern Development and Mines, Natural Resources and Forestry (MNDMNR) on April 25<sup>th</sup>, 2022, with follow-ups on May 2<sup>nd</sup>, 2022, and May 13<sup>th</sup>, 2022, regarding a new residential use within 300 metres of the licenced Aggregate Site. To date no comments/advice has been received from MNDMNR.

Also, as part of the preliminary review technical advise was requested from the Ministry of the Environment, Conservation and Parks (MECP) on May 18<sup>th</sup>, 2022. No response from MECP has been received to date.

The following letter was sent to the applicants on August 10<sup>th</sup>, 2021 and copied to the Municipality:

*'Dear Mr. Banger:*

*In review of your application for Consent to Sever, re: the above location, there is a licensed Aggregate Resource Site identified as being within Lot 1, Conc. A to the south of the subject land, on the south side of Bidwell Road.*

*As per the Ministry of the Environment (now the Ministry of the Environment, Conservation and Parks (MECP) the D-series guidelines require a minimum setback of 300 metres from the Aggregate Site for a new residential (sensitive) use.*

*I have attached a sketch identifying the 300 metre buffer; you will note that the subject land is entirely within the 300 metres buffer, as shown in the green hatched area.*

*Policies of our Official Plan for the District of Manitoulin and the Provincial Policy Statement 2020 do not support new sensitive uses within an Aggregate Resource Area. I have attached a copy of the policies from our Official Plan document and from the Provincial Policy Statement 2020.*

*If the licence is rescinded, or if a report can be obtained supporting the new residential use, there may be a possibility to proceed with an application for Consent to Sever.*

*Please advise if you wish to proceed with the application or if you would like me to return the application and application fee. If you have any questions or need any clarification, please do not hesitate to contact our Office. Thank you.'*

Despite the concerns made available to the applicants, that the policies that had been provided to them do not support new lot creation within 300 metres of the Aggregate Site, Mr. Banger advised by email on April 22<sup>nd</sup>, 2022 and May 5<sup>th</sup>, 2022 that they wished to proceed with putting their application before the Planning Board for their consideration.

Therefore, the application was circulated on May 6<sup>th</sup>, 2022 to the Municipality of Assiginack, Bell Canada, and to all property owners within 60 metres, and by the posting of a notice, clearly visible and legible from a public highway or other place to which the public has access, as required by Ontario Regulation 197/96.

The CAO for the Municipality advised via email on May 20<sup>th</sup>, 2022 that:

*' Council does not meet until June 7<sup>th</sup>, and they will need to review the application. I have included the Questionnaire but must caution that they may change slightly after Council's learned review.'*

Mary McCartney, Bell Canada advised on May 6<sup>th</sup>, 2022 that Bell Canada has no comments or concerns regarding the application as proposed.

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Application File No. B12-22 - continued  
May 24, 2022

The Secretary-Treasurer conducted a Site Visit to the property on May 20<sup>th</sup>, 2022 and observed the civic address #653 on the proposed severed land and #525 on the proposed retained land. She also observed three accessory structures within the proposed retained land that were not indicated on the application.

There have been no inquiries or concerns received as a result of circulation to property owners within 60 metres and/or the posting of notice.

Mr. Banger, applicant, had requested documentation (14 pages) be provided to the Board Members for consideration of their application.

Mr. Banger, applicant, was present during consideration of the application. He provided the History of their property and the History of the Aggregate Site; and explained their dilemma regarding the proposed new lot being within 300 metres of the Licenced Aggregate Site, which is currently not operating.

There was no one else participating in the teleconference who wished to speak in support or opposition to the application.

Discussion among the Board included:

- Provincial Policy regarding Licenced Aggregate Sites - states in part that (residential uses) generally not permitted; the 300 metre buffer is from the property line not from the active site; policies need to be taken into consideration; if the licence is revoked it would solve the problem; a reduced licence may help; the Ministry is not responding; the Township has not provided their comments; need more information to make an informative Decision.

Although the Board was sympathetic to Mr. Banger's concerns the Board was in favour of deferring their Decision until the Municipality has had a chance to provide their comments.

In consideration of the information presented, a motion was made and duly seconded that the application be deferred until the next Planning Board Meeting to allow the Municipality of Assiginack additional time to review the application and to provide comments to the Planning Board.

Mr. Banger advised he had no concerns with a deferral.

#### June 28<sup>th</sup>, 2022

The Secretary-Treasurer reported that this application had been deferred at the May 24<sup>th</sup>, 2022 Board Meeting to allow additional time for the Municipality to review the application and to provide comments.

The Municipality of Assiginack advised of the following two Motions:

Resolution No. 154-12-2022 - June 7<sup>th</sup>, 2022:

*' That we inform the Manitoulin Planning Board that we wish to defer comments on Consent Application B12-22, as we are consulting a solicitor and a planning consultant and have not confirmed a municipal position as of this date.....Carried.'*

Resolution No. 169-13-2022 - June 21<sup>st</sup>, 2022:

*' That we inform the Manitoulin Planning Board that we support Consent Application B12-22 as presented, providing the applicant obtains an Impact Analysis Report favourable to the creation of a new lot and subject to the setback recommendations contained in the report.....Carried.'*

The Ministry of the Environment, Conservation and Parks (MECP) provided the following comments via email, on June 22<sup>nd</sup>, 2022.

*'The Ministry land use compatibility guidelines (D-Series Guidelines) were development for Municipalities and other planning authorities to use when making land use planning decisions. These guidelines should be considered to help ensure relevant compatibility studies are completed before new sensitive land uses, such as residential areas, are built near existing major facilities and vice versa.'*

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Application File No. B12-22 - continued  
June 28, 2022

Also via email on June 24<sup>th</sup>, 2022, to provide clarification, MECP acknowledged that they are in agreement that:

- the guidelines still apply to non-operating existing facilities such as an inactive Aggregate Site, like the one we are dealing with here;
- the guidelines set out minimum standards to be used by qualified professionals in preparing reports and recommending mitigation measures;
- newly proposed sensitive uses within the influence area of the facility should also comply with the guidelines;
- it is the proponent's responsibility to ensure that the new uses comply with the guidelines; and
- in order to conform to the guidelines, the proponent should consult with a professional engineer or other qualified person to conduct the study and determine mitigation measures (if any) so the new development meets the required guidelines.

The Secretary-Treasurer informed the Board that she had a telephone conversation with Mr. Hobbs, CAO for the Municipality of Assiginack on June 28<sup>th</sup>, 2022 regarding Resolution 169-13-2022, the OP Policies and the PPS 2020 Policies regarding new residential uses in the vicinity of a licensed Aggregate Site, and what information a favourable Impact Analysis Report would include.

The following email was received from Mr. Hobbs on June 28<sup>th</sup>, 2022:

*Theresa:*

*Thank you for speaking with me this morning on this file. I would ask that the Board defer this approval until your July meeting. My reasoning is that based on what we have reviewed in terms of the OP and PPS as well as a lack of response from the Provincial ministries and the potential involvement of planning and engineering consultants, who come at a cost to someone.*

*I would like to examine how to best move the file beyond the Board decision.*

*I think that regardless of what we would all like to see, the Board will have to refuse or at least impose financially onerous conditions on the approval. I would like to take the next 30 days to sit with the applicant, the planner, and any of the applicant's consultants, to determine how to appeal the board's decision in order to bring the Province to the table to explain their positions. As this fall is a municipal election, I don't see any councils proceeding with an official plan amendment but I do see a fundamental problem that the Province is not acknowledging and 30 days might allow all parties to plan a way forward to address this without working at cross purposes.*

*I thank the Board for its consideration.'*

Mr. Banger, applicant, was present during the electronic meeting. He advised he had no concerns with another deferral.

In consideration of the information presented, and at the request of the Municipality, a motion was made and duly seconded that the application be deferred until the next Planning Board Meeting.

There was no one else participating in the teleconference, who wished to speak in support or opposition to the application.

#### July 26, 2022

The Secretary-Treasurer reported that the application had been deferred at the June 28<sup>th</sup>, 2022 Board Meeting, as requested by the Municipality of Assiginack, in order for the Municipality to have discussions with their planner, the applicants, and any of the applicant's consultants and to provide additional comments.

Alton Hobbs, CAO, Municipality of Assiginack provided the Secretary-Treasurer with a copy of the Municipal Council Minutes of July 19<sup>th</sup>, 2022, which included the following Resolution No. 200-15-2022:

*'THAT we inform the Manitoulin Planning Board that we have no objection to Consent Application B21-22.'*

For clarification the Secretary-Treasurer asked Mr. Hobbs the following two questions:

1. You do not have any additional information for the Board's consideration?;
2. You are not asking for a deferral to obtain comments from your Planner?'



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Application File No. B12-22 - continued  
July 26, 2022

Mr. Hobbs, provided the following response:

*'No. Council would have the Board make its Decision and then evaluate its next steps.'*

The following email was received on July 21<sup>st</sup>, 2022, from D. Banger, applicant:

*'Hi Theresa,*

*Again I would like to be present at the next planning board meeting. We are at the point whereby a decision needs to be made concerning our severance application.'*

The Secretary-Treasurer informed the Board that she had confirmed on July 26<sup>th</sup>, 2022 (today) with the real estate sales representative that the property containing the licensed Aggregate Site, being Lot 1, Conc. A, located at #191 Monkhouse Road, Township of Sheguiandah, has been listed for sale with the description that there is a licenced quarry on the property.

The Secretary-Treasurer explained that the Manitoulin Planning Board (MPB), as the approval authority for the Consent to Sever Application, is required to make a Decision on the application under the Planning Act. Decisions are to be in conformity with the Official Plan (OP) and the Provincial Policy Statement (PPS) 2020. The Board may approve the application, may approve the application with conditions, refuse the application, or defer decision pending additional information.

During consideration of the application the Board discussed:

- *the aggregate licence is a Provincial Licence; the licence is still active; options to remove or rehabilitate the aggregate site is not a Planning Board mandate;*
- *the PPS 2020 has policies that support Aggregate Resources and protect Health and Safety; the licence is still in place;*
- *the OP has been adopted by the Municipalities and has policies in place for new land uses that are compatible with adjacent uses of land; any land use conflicts be supported by studies;*
- *cannot ignore policies;*
- *the application has been deferred twice since May; do they have the information they need to make a Decision; another deferral may not accomplish much more; they have the information to make a Decision;*
- *there needs to be a mechanism the fix the situation of residential uses close to an Aggregate site; the Ministries need to come to the table to provide policies for Manitoulin Island that are quite different than big cities like Toronto; Toronto rules may not apply to Manitoulin area;*
- *by refusing the application there is provision for the applicant to appeal the MPB decision to the Ontario Land Tribunal (OLT); this may get the Ministries involved; this may get some answers; this could set a precedent which may be helpful for similar applications.*

Mr. Banger, applicant, was present during the in-person meeting and spoke to the application. He gave a summary of '70 families' being impacted by the Licenced Aggregate site(s) and the impact this licence has on the Municipality and the local economy if new residential uses are not permitted in the vicinity of the aggregate site(s). He reported that he had spoken to Derek Leutchford, Deputy Minister's office, who told him that the MPB had the authority to make it's own Decision. He also reported that he had spoken to Robert Halliday, Tulloch Engineering, who quoted \$45K to conduct a noise, dust and vibration study but that there would be no point in conducting these studies on a non-operational site. Mr. Banger pointed out that if the lot cannot be created, he has lost \$90 K for the sale of the lot. He stated that he is very interested in getting answers and that if the application is refused, he would be appealing the Decision of MPB to the Tribunal.

In consideration of the information presented to date, including the policies of the Provincial Policy Statement 2020 and the Official Plan for the District of Manitoulin, a motion was made and duly seconded that the application be refused.

Note: The Chair requested a recorded vote. Details are provided in the Planning Board Minutes of the meeting.

There was no one else participating in the in-person meeting who wished to speak in support or opposition to the application.

Board Minutes  
July 26, 2022 - Continued

Application File No's.: B14-22 No. of Members Present: 8  
Date of Decision: [June 28, 2022 deferred] July 26, 2022  
Location of Property: Part Lot 11, Conc. XV, Surveyed as Part 1, Plan 31R-2539,  
Township of Campbell, Municipality of Central Manitoulin, District of Manitoulin

### DECISION

The purpose of this application made under Section 53(1) of the Planning Act by Therese Trainor is to provide for the creation of a new lot having a minimum frontage of 46 M. on Dean Bay of Lake Huron and an average depth of  $\pm 170.5$  M., thereby containing an area of  $\pm 0.7$  Hec. This new lot will include part of the existing right-of-way, surveyed as Part 1, Plan 31R-2949. The lot will be together with a right-of-way and will be subject to right-of way in favour of lots to the east. The applicant's seasonal dwelling is located within this land. Seasonal residential uses are proposed to continue.

The land to be retained has frontages of  $\pm 91.2$  M. on Dean Bay of Lake Huron,  $\pm 107.2$  M. on the municipal road allowance, and  $\pm 369.7$  M. on Burke Road, a maintained municipal road, and an average depth of  $\pm 825$  M., thereby containing an area of  $\pm 8.7$  Hec. This land will be subject to right-of-way over part of Part 1, Plan 31R-2949, in favour of the proposed new lot. According to the application there is a privy/out house located within this land that is to be removed. There are no new structures proposed at this time.

There has been three previous applications for Consent to Sever involving the subject land.

File No. B12-89 provided for a legal right-of-way over the one foot reserve being Block 21, on Subdivision Plan 31M-195, including Part 1, Plan 31R-1909, in favour of Lot 11, Conc. XV;

File No. B49-93 provided for the creation of two new lots from Lot 11, Conc. XV, surveyed as Part 1, Plan 31R-2539 and Part 3, Plan 31R-2539; and

File No. B19-99 provided for a legal right-of-way (having a width of  $\pm 10.1$  M./33 ft). over Part 1, Plan 31R-2949 (within Part 1, Plan 31R-2539) in favour of Part 2, Plan 31R-2539.

The current application involves Part 1, Plan 31R-2539, which is the lot created by File No. B49-93.

The application was circulated on May 19<sup>th</sup>, 2022 to the United Chiefs and Councils of Mnidoo Mnising (UCCMM), and to the Wiikwemkoong Unceded Territory as per Official Plan Policy F.5 - Consultation and Engagement.

Saul Bomberry, UCCMM, advised via email that they have no comments to submit at this time.

John Manitowabi, Wiikwemkoong Unceded Territory, advised that they have no comments or objections to the severance request.

The subject land has been designated Rural Area and zoned Rural ( R). Seasonal residential uses are proposed to continue. The structures located within the subject land(s) are permitted by Ontario Regulation 461/89 and amendment to Ontario Regulation 672/81 approved under File No. 51Z0-488-09.

Access for the proposed new lot will be via private right-of-way over Part of Part 1, Plan 31R-2949 and over the one foot reserve surveyed as Part 1, Plan 31R-1909 ( $\pm 7.3$  M./ $\pm 23.95$  ft. wide) and Block 21 on Subdivision Plan 31M-195, to Burke Road, to Grimsthorpe Road, both maintained municipal Roads. The retained land will be subject to right-of-way over the remainder of Part 1, Plan 31R-2949 in favour of the new lot.

Official Plan Policy F.4.4.2 - Consents - under 4.c) states:

*' Any required road widenings, improvements or extensions to existing rights-of-way may be required as a condition of severance approval.'*

The applicant was advised that the existing right-of-way may need to be re-surveyed to be 20 m./66 ft. wide.

Services consist of private individual septic system and private well. According to the application, the applicant has no intention to build on the retained land. There are no new services proposed as at this time.

Board Minutes  
July 26, 2022 - Continued

Application File No. B14-22 - continued  
June 28<sup>th</sup>, 2022

The Public Health Sudbury and District advised they have no concerns and that it appears that the proposed severed and retained lots are capable of development for installation of a septic tank and leaching bed system.

There is an unground hydro line identified within the subject land. A request for comments was sent to Hydro One as part of the review and they provided the following comments, via email, on May 20<sup>th</sup>, 2022:

- They are unable to locate an unregistered easement over the subject land;
- Hydro One would like an easement because the line services multiple properties beyond the subject land;
- they require a survey; width is 5 m. both sides of centerline for overhead wire and 3 m. both sides of centerline for the underground wire; it is to be conveyed to Hydro One as a registered easement;
- Our concern would be continuing to service the other properties that have service now; the existing line was private at one time belonging to Trainor and Hydro purchased the line according to a retired employee however I am unable to locate any of the documentation for the purchase or any unregistered easements.

The comments received from Hydro One were forwarded to the applicant, via email, on May 24<sup>th</sup>, 2022.

There is an unevaluated wetland identified within a small portion of the proposed retained land.

There is a Deer Wintering Area identified within the northerly part of the proposed retained land.

There is an endangered species habitat identified to the south east along the shoreline. However none is identified within the subject land or directly in front of the property along the shoreline.

Due to the size of the proposed lots and a building envelope outside the identified habitat, the subject land does not appear to have any natural heritage features or species at risk (SAR) concerns.

A potential Wildland Fire Hazard was identified within the subject land.

Satellite imagery identifies the areas of tree cover within the subject land. It appears there would be a building envelope outside the area of influence, for the proposed severed and retained land, that would conform to the Natural Heritage Policies of the Provincial Policy Statement (PPS) 2020.

This proposal is considered to be in conformity with the PPS 2020.

This application was circulated on June 9<sup>th</sup>, 2022 to Bell Canada, the Municipality of Central Manitoulin, and to all property owners within 60 metres and by the posting of a notice, clearly visible and legible from a public highway or other place to which the public has access, as required by Ontario Regulation 197/96.

Bell Canada advised that they have no comments or concerns regarding the application.

The Municipality of Central Manitoulin advised they have no concerns and recommend that Consent be granted.

There have been three telephone calls to the Office, from property owners in the vicinity of the subject land requesting further explanation of the application but they did not advise of any concerns. M. Poynter, owner of Part Lot 10, Conc. XV; M. McKechnie, owner of Part Lot 10, Conc. XV; and L. Chauvin, owner of Part Lot 12, Conc. XV. Mr. Chauvin requested a copy of the Decision of Planning Board. No written concerns have been received.

There have been no other inquiries or concerns received as a result of circulation to property owners within 60 metres or the posting of the notice.

During consideration of the application, the Board discussed the width of the existing right-of-way and the request from Hydro One for an Easement. The Board were in agreement that taking into consideration the OP policy and good planning practices the current right-of-way should be re-surveyed having a minimum width of 20 metres.

Board Minutes  
July 26, 2022 - Continued

Application File No. B14-22 - continued  
June 28<sup>th</sup>, 2022

Discussion regarding the Hydro One comments included:

- is it the landowner's responsibility to pay for an Easement because the paper work had been lost by Hydro One?;
- does the Planning Board need to honour the Hydro One request for a surveyed Easement?;
- Is this a Planning Board problem?;
- what is the fall back if the Hydro Easement is not a condition of the Consent to Sever approval?

Therese Trainor, applicant, was in attendance and spoke to the application. She was not in favour of having a wider access, as this would cut into the new lot and into the retained parcel. It was explained that although the right-of-way would be surveyed having a minimum width of 20 metres, the actual travelled portion could remain at 10 metres.

Ms. Trainer reported that she had not received the email from the Planning Board with the Hydro One comments and explained that she had some paper work that Hydro One did have an easement or an agreement in place.

Due to this new information, the Board felt that a deferral of Decision was appropriate. She was asked to forward the documentation to the Planning Board to review.

Ms. Trainer advised that she did not have any concerns with a deferral of her application.

In consideration of the information presented, a motion was made and duly seconded that the application be deferred until the next Planning Board Meeting to allow the Planning Board to consider the new information from Ms. Trainor and consult with Hydro One.

There was no one else participating in the teleconference, who wished to speak in support or opposition to the application.

#### **July 26, 2022**

Ms. Trainer provided the Secretary-Treasurer with a letter from Hydro One, dated June 04, 1999 addressed to Richard Trainor which included a '*Transfer of Ownership*' of the Hydro Line for Lot 11, Conc. XV, Township of Campbell. The Secretary-Treasurer forwarded it on to S. Salt, Hydro One, for additional comments, regarding obtaining an easement.

S. Salt, Hydro One, provided to following comments via email on June 30<sup>th</sup>, 2022:

*'The document is a transfer of ownership of Ms. Trainor's two private poles back in 1999. Hydro One purchased the poles so we can service other waterfront properties beyond the Trainor property. I am OK with the application for Consent to Sever with document Ms. Trainor has provided. No easement is required.'*

During consideration of the application, the Board discussed the number of lots created from Lot 11, Conc. XV. As approval of this application would result in a 3<sup>rd</sup> lot being created by the Consent to Sever process, the Board were in agreement to add a note to the Decision regarding further development.

There was no one participating in the meeting who wished to speak in support or opposition to the application

#### **Consent is tentatively granted subject to the following conditions:**

The following documents must be submitted to the Secretary-Treasurer of the Board within two years from the date of the notice of decision for certification:

- a) the Transfer of Land form(s) prepared by a solicitor/lawyer, and
- b) a Schedule to the Transfer of Land form on which is set out the entire legal description of the parcel(s), and the right-of-way for access, given conditional approval. This Schedule must also contain the names of the parties indicated on the Transfer of Land form.

Board Minutes  
July 26, 2022 - Continued

Application File No. B14-22 - continued  
July 26, 2022

Accompanying the transfer documents shall be:

- i) a reference plan of survey which bears the Land Registry Office registration number as evidence of its deposit therein, illustrating the parcel(s) and right-of-way for access having a minimum width of 20 metres to which the consent approval relates;
- ii) a written confirmation from the municipality that the access from the proposed severed land to the maintained municipal road, known as Burke Road, has been constructed to a standard for travel by emergency vehicles satisfactory to the municipality;
- iii) a written confirmation from the municipality that any portion of the travelled road which is maintained by the municipality that encroaches on the subject land, has been surveyed and conveyed to the municipality satisfactory to the municipality;
- iv) a written confirmation from the municipality that the structure(s) conform to Zoning By-law No. 2002-07, satisfactory to the municipality, i.e. removal of the privy/out house;
- v) a fee of \$125.00 for each Transfer of Land submitted for Certification; and
- vi) a written confirmation from the municipality that all outstanding municipal taxes have been paid.

Note: Subsection 3 or 5, as the case may be, of Section 50 of the Planning Act shall not apply to any subsequent conveyances of or in relation to the parcel of land being the subject of this application.

Note: Any shoreline improvements shall be done only with the consultation of The Ministry of Northern Development and Mines, Natural Resources and Forestry (MNDMNR) the Department of Oceans and Fisheries of Canada, (DFO) and the Municipality.

Note: Further development by the consent procedure for the subject lands may not be considered.

Board Minutes  
July 26, 2022 - Continued

Application File No's. B16-22, B17-22 and B18-22 No. of Members Present: 8  
Date of Decision: July 26, 2022  
Location of Property: Lot 1, Conc. XVI excepting Part 1, Plan 31R-622 and Part 3, Plan 31R-164 and Lots 2 & 3, Conc. XVI, Township of Campbell, Municipality of Central Manitoulin, District of Manitoulin

### DECISION

The purpose of this application made under Section 53(1) of the Planning Act by Nathan Welch on behalf of Welch Farms Inc., is to provide for the creation of three (3) new lots for farm related uses.

File No. B16-22 proposes to create a new lot, consisting of Lot 3, Conc. XVI as originally surveyed, having a frontage of ±402 M. on the travellable, non-maintained municipal allowance, known as Fire Hall Road, and a depth of ±1,005 M., thereby containing an area of ±40 Hec. There are no structures on this land.

File No. B17-22 proposes to create a new lot consisting of the north ±half of Lots 1 & 2, Conc. XVI, having a frontage of ±480 M. on Highway 551, a provincially maintained highway, and a depth of ±804 M., thereby containing an area of ±40 Hec. According to the application there is a tarped equipment shed located within this land.

File No. B18-22 proposes to create a new lot consisting of the south ±half of Lot 1, Conc. XVI excepting Part 1, Plan 31R-622 and Part 3, Plan 31R-164, having a frontage of ±112 M. on Highway 551, a provincially maintained highway, and an average depth of ±365 M., thereby containing an area of ±17 Hec. According to the application the applicant's dwelling is located within this land.

The land to be retained, consisting of the south ±half of Lot 2, Conc. XVI, has a frontage of ±402 M. on the travellable, non-maintained municipal allowance, known as Fire Hall Road, and a depth of ±525 M., thereby containing an area of ±20 Hec. There are no structures within this land.

There has been three previous applications for Consent to Sever involving the subject land.

File No. 04-51C-77-274, approved by the Ministry of Housing, provided for the creation of a new lot, within Lot 1, Conc. XVI, surveyed as Part 1, Plan 31R-622; and

File No. B21-05 provided for the creation of a new lot, being Lot 5, Conc. XVI; and

File No. B08-06 provided for the creation of a new lot, being Lot 4, Conc. XVI.

The retained land resulting from these applications is the land subject to the current applications.

Access is via an existing entrance from Highway No. 551 for File No. B17-22 and via an existing Highway entrance, #4983, for File No. B18-22. Access is via the travellable, non-maintained municipal allowance, known as Fire Hall Road, for File No. B16-22 and the retained land.

According to the application Fire Hall Road is winter maintained by shared agreement and costs with those that currently live on the south side of Fire Hall Road.

A copy of MTO Permit No. EN-2021-54S-00000015 was provided for the existing entrance at #4983 Hwy 551.

As part of the preliminary review the following comments were received from Laurel Muldoon, Corridor Management Senior Project Manager, Planner, MTO North East Region, via email on May 18<sup>th</sup>, 2022:

*'The MTO does not have any objections in principle to the land severance. It is the understanding of the Ministry that the intention is to sever three (3) and retain one (1) lot with two of the three severed lots (#2 and #3) located along Highway 551. I should note though that the permit entrances that have been issued for access on Highway 551 are for agriculture use only and they will not be permitted as residential entrance access onto the Highway.'*

The comments received from MTO were provided to the applicant.

Board Minutes  
July 26, 2022 - Continued

Application File No's. B16-22, B17-22 and B18-22 - continued  
July 26, 2022

Services consist of private well and private individual septic system for the existing dwelling. No new services are proposed at this time.

There is a drain, known as the McDermid Drain identified within the lot proposed by File No. B17-22. The applicant was advised that the property may be subject to a reassessment under the Drainage Act and an agreement between the land owner and the municipality may be required as a condition of the consent to sever approval.

There are livestock facilities located to the north within Lots 2, 3 & 4, Conc. XV. The farm related structures meet the requirements of the Minimum Distance Separation (MDS) Formulae as required by the Ministry of Agriculture Food and Rural Affairs (OMAFRA). There are building sites that are outside the area of influence.

The new lot proposed by File No. B17-22 is designated Prime Agriculture Area and zoned Agriculture (A) and Rural (R). The two lots proposed by File No's. B16-22 and B18-22 are designated as Rural Area and zoned Agriculture (A) and Rural (R). Farm related uses are proposed to continue.

Zoning By-law No. 2002-07 for the Municipality of Central Manitoulin permits residential uses in the Agriculture (A) Zone and the Rural (R) Zone. There are no land use changes proposed at this time.

Official Plan states in part under Policy C.4.3:

*' In Agriculture Areas, the long-term interests of agriculture, including the preservation of farmland and the enhancement of farming operations, will be the primary role of the designation. The following consent policies will apply to the lands designated as Agriculture Areas in the District.*

*A consent to sever may be granted for the following purposes:*

1. *To divide a lot subject to the following conditions:*
  - a. *the minimum area of both the retained and severed lots will be approximately 40 hectares in size, unless otherwise provided for in this Plan. Smaller severed lot sizes will only be considered by amendment to the Zoning By-law where the sizes of the parcel to be severed and the parcel to be retained are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations.*
2. *Where a previous or current farm acquisition has rendered a habitable farm dwelling to be surplus to the needs of a farm operation, a consent may be permitted subject to the following conditions:*
  - a. *the retained farm parcel will be zoned so as to prohibit the construction of any additional dwellings;*
  - b. *the surplus dwelling parcel will be subject to Minimum Distance Separation I setback provisions, and be zoned to recognize the non-farm residential use;*
  - c. *any livestock facilities to remain on the retained parcel will remain suitable, as determined by the Planning Board and/or municipality and the farm operator for further livestock operations if the Minimum Distance Separation I provisions can be met.'*

Official Plan states in part under Policy C.4.3:

The Provincial Policy Statement 2020 states, in part, under Policy 2.3.4.1:

*'Lot creation in prime agricultural areas is discouraged and may only be permitted for:*

- c) *a residence surplus to a farming operation as a result of farm consolidation, provided that:*
  1. *the new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services; and*
  2. *the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance. The approach used to ensure that no new residential dwellings are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches which achieve the same objective.'*

Board Minutes  
July 26, 2022 - Continued

Application File No's. B16-22, B17-22 and B18-22 - continued  
July 26, 2022

The applicant was advised that an Amendment to Zoning By-law No. 2002-07 for the Municipality of Central Manitoulin would be required to prohibit residential uses on the lot proposed by File No. B17-22, which is located within a Prime Agriculture Area.

A potential Wildland Fire Hazard was identified within Lot 3, Conc. XVI and the southerly portion of Lot 2, Conc. XVI.

The Provincial Policy Statement (PPS) 2020 states under Section 3.1.8:

*'Development shall generally be directed to area outside of lands that are unsafe for development due to the presence of hazardous forest types for wildland fire.*

*Development may however be permitted in lands with hazardous forest types for wildland fire where the risk is mitigated in accordance with wildland fire assessment and mitigation standards.'*

Satellite imagery (2021) identifies the areas of tree cover within the subject land. It appears there would be building envelopes outside the area of influence for the lot proposed by File No. B16-22 and for the retained land that would conform to the Natural Heritage Policies of the Provincial Policy Statement (PPS) 2020.

This proposal is considered to be in conformity with the Provincial Policy Statement 2020.

The application was circulated on July 6<sup>th</sup>, 2022 to the Municipality of Central Manitoulin, Bell Canada, and to all property owners within 60 metres and by the posting of a notice, clearly visible and legible from a public highway or other place to which the public has access, as required by Ontario Regulation 197/96.

The Municipality recommends that Consent be granted and provided the following comments, via letter on July 12<sup>th</sup>, 2022:

*' Re: B16-22, B17-22 and B18-22*

*As part of the conditions of consent on the above noted applications, Fire Hall Road be at a standard passable by emergency vehicles satisfactory to the Municipality and Section 65 of the Drainage Act may apply.'*

Mary McCartney, Bell Canada, advised via email on July 7<sup>th</sup>, 2022 that Bell Canada does not have any comments or concerns regarding the applications.

There was an inquiry from an abutting land owner to the west, (Lot 4, Conc. XVI), J. Hodgins, requesting further explanation of the application and he advised of a new mailing address. No written concerns have been received.

There have been no other inquiries or concerns received as a result of circulation to property owners within 60 metres or the posting of the Notice.

During consideration of the application, the Board discussed the lot proposed by File No. B17-22, being in a Prime Agriculture Area designation and making sure it remained a minimum size of 40 Hec. and that residential uses be prohibited.

There was no one in attendance who wished to speak in support or opposition to the application.

**Consent is tentatively granted subject to the following conditions:**

The following documents must be submitted to the Secretary-Treasurer of the Board within two years from the date of the notice of decision for certification:

- a) the Transfer of Land form(s) prepared by a solicitor/lawyer, and
- b) a Schedule to the Transfer of Land form on which is set out the entire legal description of the parcel(s) given conditional approval. This Schedule must also contain the names of the parties identified on the Transfer of Land form.



Board Minutes  
July 26, 2022 - Continued

Application File No's. B16-22, B17-22 and B18-22 - continued  
July 26, 2022

Accompanying the transfer documents shall be:

- i) a reference plan of survey, which bears the Land Registry Office registration number as evidence of its deposit therein, illustrating the parcel(s) to which the consent approval relates;  
**or**  
a boundary line survey identifying the new lot lines resulting from the severance(s), which will include all four boundaries for the lot proposed by File No. B17-22;
- ii) a written confirmation from the Ministry of Transportation (MTO) that an entrance permit for the lot proposed by File No. B17-22 has been issued and is satisfactory to the requirements of MTO;
- iii) a written confirmation from the municipality that any portion of the travelled road (Fire Hall Road) that encroaches onto the subject land(s), has been surveyed and conveyed to the municipality satisfactory to the municipality;
- iv) written confirmation from the municipality that access along the Fire Hall Road, has been constructed to a standard for travel by emergency vehicles satisfactory to the municipality;
- v) a written confirmation from the municipality that any reassessment required for the subject lands as required by Section 65 of the Drainage Act has been completed by the landowner, satisfactory to the municipality;
- vi) a copy of an approved amendment to Zoning By-law No. 2002-07 prohibiting residential uses in the Prime Agriculture Area, within for the lot proposed by File No. B17-22, which is a minimum size of 40 Hec. and identified as a Part Number(s) on a Plan of Survey;
- vii) a fee of \$125.00 for each Transfer of Land submitted for Certification; and
- viii) a written confirmation from the municipality that all outstanding municipal taxes have been paid.

**Note:** Subsection 3 or 5, as the case may be, of Section 50 of the Planning Act shall not apply to any subsequent conveyances of or in relation to the parcel of land being the subject of this application.

**Note:** This property may be subject to reassessment under the Drainage Act due to the Municipal Drain.

**Note:** Entrance permits from Highway 551 are required from the Ontario Ministry of Transportation (MTO) to reflect the change in ownership of the subject lands.