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July 7, 2025
252174 – Reg Adams – 1096 Pilgers Rd

Township of Nipissing
45 Beatty Street
Nipissing, ON P0H 1W0

Attn: John-Paul Negrinotti
Secretary-Treasurer, Committee of Adjustment

SUPPLEMENTAL PLANNING REPORT in support of an application for Consent to Sever to separate two (2) whole lots that have merged on-title represented by PIN 52215-0081 – 1096 Pilgers Rd, Nipissing Twp.

John-Paul,

TULLOCH had been retained by Reg Adams the current owner of those lands known as 1096 Pilgers Road in Commanda (PIN #52215-0081); legally described as Concessions 11 & 12, Lot 3, to prepare an application for a Consent to Sever on the subject lands. The intent of the application is to separate two (2) original township lots that have merged on-title. The proposed severed is vacant and undeveloped and the owner intends to offer it for sale as a future rural residential/farm building site. The proposed retained will remain in the ownership of the applicant and includes his existing home, garage and barn built over a century ago.

In addition to the materials that TULLOCH prepared in support of this application, we have a prepared this Supplemental Planning Report for the Approval Authority's consideration.

BACKGROUND

On behalf of our client, Tulloch Planning Services objected to the imposed Condition D of the decision which stated that: *"A Zoning By-law Amendment to rezone a portion of the proposed Severed Lot to the Environmental Protection (EP) Zone to include lands within 120 metres of the unclassified wetland feature"* that was recommended as a Condition of Approval on June 10th.

Committees of Adjustment in Ontario routinely impose conditions on approvals. Often applicants agree with the conditions or are otherwise willing to accept a disagreeable condition in order to obtain an approval. However, that is not always the case and, occasionally, applicants (or their agents) challenge proposed or imposed conditions of approval.

While Committees have broad statutory authority to impose such conditions, their powers are not unlimited. In recent Case Law, 2024 CanLII 102780 (ON LT), the Ontario Land Tribunal confirmed the long-standing principle that conditions must be “*reasonably related*” to what is being applied for. It is our submission and contention that Condition D is, if not unreasonable, at the very minimum - unnecessary.

As authorized agents for the applicant, we were not advised of this imposed condition at any point in the weeks leading up to the public meeting and had no opportunity to advocate and/or offer a alternative professional planning opinion or another potential solution to the Committee. This supplemental report will attempt to do so now prior to the Committee reconvening to consider our request to strike (or modify) Condition D.

SUPPLEMENTAL PLANNING & ENVIRONMENTAL ANALYSIS

In the Report prepared by: Jamie Robinson MCIP, RPP and Patrick Townes, BA, Bed from MHBC (Planners of Record for the Township of Nipissing), the authors wrote that: *“The subject lands are designated as Rural and Environmental Protection in the Official Plan. The Environmental Protection designation includes unclassified (Other) Wetlands, and the subject lands are also located within a Deer Yard (Stratum 1). The subject lands are located within the Rural (RU) and Environmental Protection (EP) Zones in the Zoning By-law.”* The location of the Environmental Protection designation and associated unclassified wetlands are shown in green here:

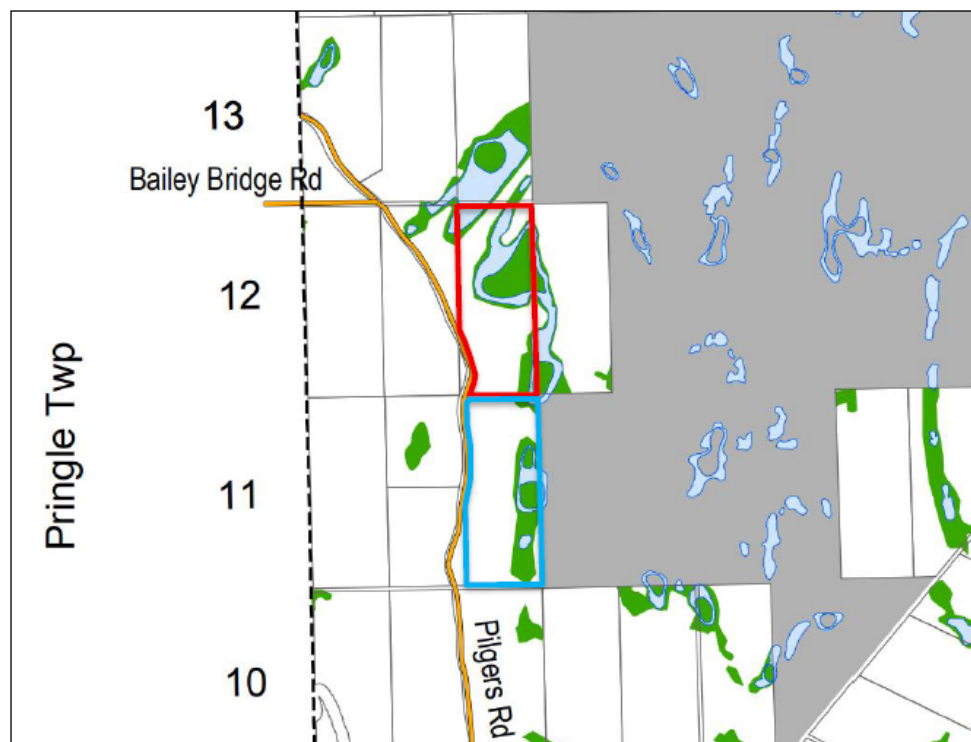


Figure 1.0 – Two (2) original Township Lots that have merged on-title and associated EP zone/unevaluated wetlands. Blue = proposed severed. Red = proposed retained.

The authors further state that: “Section 4.1 of the PPS includes policies regarding the long-term protection of Ontario’s natural heritage features and areas. There is an unclassified wetland feature identified on the proposed Retained Lot with an approximate size of 25 hectares (61.8 acres) and on the proposed Severed Lot with an approximate size of 9 hectares (22.2 acres). The Official Plan requires an Environmental Impact Study to evaluate proposed development within 120 metres of this type of environmental feature. The applicants have not submitted an Environmental Impact Study, and therefore a Zoning By-law Amendment application is recommended as a condition of provisional Consent to restrictively zone the lands within 120 metres of the unclassified wetland to prohibit development and site alteration, on the proposed Severed Lot. This measure is to ensure that new development on the proposed Severed Lot will be more than 120 metres from the unclassified wetland. The proposed Retained Lot is already developed, and a building area has already been established, so additional mapping to prohibit development beyond the current Environmental Protection (EP) Zone on the proposed Retained Lot is not required.”

PLANNING ANALYSIS

It is important to note that the MHBC’s Planners have ‘recommended’ this condition because “*applicants have not submitted an Environmental Impact Study*” as per Section 5.2 of the Official Plan. Section 5.2 of the Official Plan applies to lands adjacent to natural heritage features. Section 5.2.1 of the Official Plan provides that adjacent lands are the lands relevant to which impacts of a development must be considered. “*Development and site alteration on adjacent lands is not permitted unless it has been demonstrated through the completion of an Environmental Impact Study that there will be no negative impacts on the natural features and their ecological functions*”.

The subject lands contain unclassified wetlands in excess of 2 hectares, however, as this Planning Analysis and subsequent Environmental Analysis will prove, there is no development impact to this area on the proposed severed, and further the recommendation to rezone an additional 120m is not necessary and is not a good use of the *Planning Act* (we will be proposing an alternative solution to this recommended 120m buffer).

The authors of the Planning Report did not physically attend the site and therefore made assumptions of impact that are simply not possible. As shown in the following figure, there are approximately +/-270 metres from the edge of Pilgers Road to this unevaluated wetland feature. The blue lines on the figure are elevation contours at 10m intervals. Therefore, not only is the unevaluated wetland feature some 270m from the edge of the travelled road, but it is also at the bottom of a 40m drop in elevation over distance from a height of +290m at Pilgers Road to 250m at the edge of the unevaluated wetland feature.

Logically, the potential building site is at or near the road at an elevation that is flat, high and dry, and significantly setback (well in excess of 120m) from the unevaluated wetland feature.

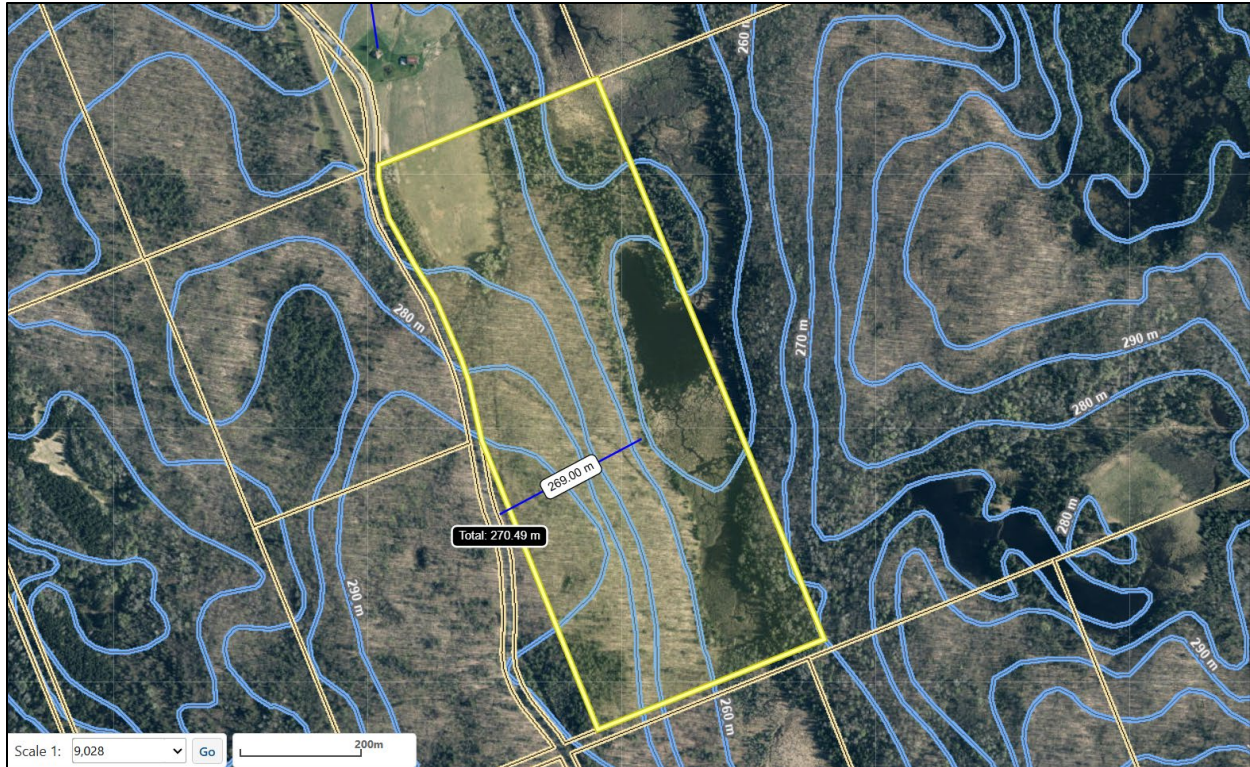


Figure 2.0 – 10m Contour Overlay on Proposed Severed
(Source: <https://www.lioapplications.lrc.gov.on.ca/AgMaps>)

A Zoning By-law Amendment application was recommended as a condition of provisional Consent to restrictively zone the lands within 120 metres of the unclassified wetland to prohibit development and site alteration, on the proposed Severed Lot. The authors wrote that: *“this measure is to ensure that new development on the proposed Severed Lot will be more than 120 metres from the unclassified wetland. The proposed Retained Lot is already developed, and a building area has already been established, so additional mapping to prohibit development beyond the current Environmental Protection (EP) Zone on the proposed Retained Lot is not required.”*

One of the questions that a Committee member asked on June 10th was “are we setting precedent by waiving this condition?”. Respectfully, the authors have recommended waiving the condition for the proposed retained, in part, because “a building area has already been established”. We are proposing that a building area can and will be identified on the proposed severed and the same condition could be achieved by simply registering a Notice On-Title. For example, the registered notice would read something like: *“the owner of the subject lot must have an acceptable building site identified by a qualified environmental professional, at minimum 120m from the EP zone/unevaluated wetland, and approved by the Municipality, prior to the issuance of a building permit.”* This alternative would remove the costly and time-consuming requirement for a Zoning By-law amendment. Furthermore, the notice on-title is in many ways better as prospective purchasers of the property are made aware of the condition through the legal process of a purchase and sale agreement.

ENVIRONMENTAL ANALYSIS

The schedules that identify the EP zone and unevaluated wetlands boundaries are based on 1984 MNR mapping which was created via a desktop exercise and has not been updated in 40+ years. The *Provincial Planning Statement* addresses development and site alterations in relation to *significant wetlands* and their adjacent areas.

Here are a few points regarding wetlands and classifications you may consider helpful:

- **Provincially Significant Wetlands (PSWs)** - Wetlands that have been evaluated under the Ontario Wetland Evaluation System (OWES) by a trained Wetland Evaluator for their biological, social, hydrological and special feature values and scored a high value in their assessment. These wetlands support sensitive features or play an important role in the ecosystem.
- **Evaluated - Not Provincially Significant Wetland** - Wetlands that have been evaluated by a trained Wetland Evaluator that have not scored high enough to be considered Provincially Significant.
- **Unevaluated Wetland** - Wetlands that have not been evaluated by a trained Wetland Evaluator. While they have not been assessed and their significance unknown, they are still subject to policies and guidelines of municipalities and other regulatory authorities. Many wetlands in northern Ontario fall into this category.

It is a general best management practice to not permit development within a wetland, but it is possible to get a permit to develop in an unevaluated or non-Provincially Significant wetland through an application process. Arbitrarily assigning a further 120m designation/buffer around an unevaluated wetland, respectfully, should not be recommended by someone who is not a trained Wetland Evaluator.

It is understood that activities on lands adjacent to wetlands may potentially have impacts on a wetland. Adjacent lands are considered lands that are in proximity to a development or site alteration where an activity may have a negative impact on the wetland. Generally, these adjacent areas have been identified as areas within 30m of unevaluated wetlands or evaluated - not provincially significant wetlands. Due to their level of significance on the landscape, the adjacent area of Provincially Significant Wetlands has generally been identified as 120m. Recent changes to the Conservation Authorities Act of Ontario have reduced the adjacent lands to all wetlands (PSW included) to 30m from 120m within areas regulated by Conservation Authorities.

When development and site alterations are proposed within adjacent lands to a wetland, consideration should generally be given to determine whether or not (and how) the development may affect the function(s) of the wetland. In areas where Conservation Authorities have jurisdiction, development and site alterations may be allowed to proceed within these adjacent

lands subject to Section 28 permitting and development conditions. Adjacent lands have typically not been identified as a 'no activity zone', instead, an area where added effort to reduce potential impacts to wetlands can be considered.

In addition, in areas within Conservation Authority jurisdiction, if there is room on a property to develop outside of the adjacent lands, preference is given to that location. If development can take place outside of the adjacent lands, Conservation Authority permitting is not required and supporting studies on impacts to wetlands is not required.

CONCLUSIONS

It is not difficult to surmise after visiting the site that the potential building areas on the proposed severed are nearer the road level and well away from the unevaluated wetland, and in any case, not 150m+ in from the road and down a 40m drop to be within 120m of the unevaluated wetland, EP zone. Using a commonsense approach to the approval, coupled with a re-wording of Condition D, will afford all the same protections that the authors are recommending through a costly and time-consuming Zoning By-law amendment process. In short, there is no valid reason to rezone an additional 120m from the unevaluated wetland boundary on the subject lands.

With this in mind, we respectfully request that Condition D be struck and replaced with the following: Condition D: "That a Notice be placed On-Title with Land Registry that states that a qualified environmental professional must identify an appropriate building location on the subject lands prior to the issuance of a building permit and, at minimum, that the building location be at least 120m from any identified wetland feature."

Thank you for your consideration.

Respectfully submitted,



Steve McArthur, MCIP, RPP
Project Manager | Senior Planner