A PROCEDURAL GUIDE TO THE ONTARIO *PLANNING ACT* AMENDMENTS 2022.
(An Unauthorized Guide for Consenting Authorities)

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On April 15, 2021, the Ontario Government introduced in Bill 276 amendments to the *Planning Act*, which controls the subdivision of land in the province. Bill 276 was given Royal Assent on June 3, 2021. Proclamation occurred on January 1, 2022 and the amendments are now law.

Some of the amendments affect the business of consenting authorities. This procedural guide is intended to offer guidance to consenting authorities, lawyers, planners, and the public on the procedural amendments to the *Planning Act* and how the amendments should be implemented and applied.

THE TIME FOR SATISFYING CONDITIONS IS NOW 2 YEARS, NOT ONE.

Section 53(41) has been amended to provide that the period for satisfying conditions under a provisional consent is now 2 years after which, if unfulfilled, the application for consent is deemed to have been refused. The two year period now takes the pressure off applicants to get conditions satisfied when there may be delays due to the inability to retain a surveyor, weather conditions preventing surveying, or the need to obtain the cooperation of others including municipal bodies to facilitate the satisfaction of conditions.

For clarity, if an application has been deemed refused after one year but the period of two years from decision has not yet lapsed, the applicant cannot seek to resurrect the application and satisfy

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This guide is prepared based on the author's experience in the drafting and finalization of the amendments with the Ministry. It has not been reviewed, authorized or approved by the Ministry and the comments are those of the author alone.

the conditions withing that window of time. Once the application has been deemed refused, section 53 (41.1) makes it clear that the application gets no benefit from the new legislation.

Note to consenting authorities: Consenting authorities will likely want to amend their standard form conditions to change the usual one year period for satisfying conditions to two years in accordance with the legislation.

The applicable sections

> Conditions not fulfilled
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> (41) If conditions have been imposed and the applicant has not, within a period of two years after notice was given under subsection (17) or (24), whichever is later, fulfilled the conditions, the application for consent shall be deemed to be refused but, if there is an appeal under subsection (14), (19) or (27), the application for consent shall not be deemed to be refused for failure to fulfil the conditions until the expiry of two years from the date of the order of the Tribunal issued in respect of the appeal or from the date of a notice issued by the Tribunal under subsection (29) or (33).
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> Transition
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> (41.1) For greater certainty, subsection (41), as it reads on and after the day subsection 4 (11) of Schedule 24 to the *Supporting Recovery and Competitiveness Act, 2021* comes into force, does not apply with respect to an application that was, before that day, deemed to have been refused under subsection (41), as it read immediately before that day.

Timing examples-does the new provision apply to outstanding decisions?

Provisional consent issued November 2, 2020 and conditions not satisfied within the one year period following decision	The decision lapsed on November 2, 2021 and is deemed refused; 1 year only to satisfy conditions since it lapsed before January 1, 2022, the date of proclamation of the amendment.
Provisional consent issued November 2, 2021.	2 years to satisfy the conditions even though decision issued before January 1, 2022, the date of proclamation of the amendment.

CONSENT CERTIFICATES FOR THE RETAINED LAND

Section 53(42) provides that where consent has been given, the clerk shall give a certificate of the consent to the applicant. This provision remains the same. However, the Ministry recognized that with any consent other than a consent that is stipulated (for a lot addition for instance), 2 or more separate parcels are created with the decision: the applied for lot and the retained land, the land abutting the lot for which consent was sought. An applicant can ask for and the consenting authority shall give a consent for the retained land.

The recognition that two or more parcels are created with an unstipulated consent has been built into the *Planning Act* with the following provisions. Section 53(12) sets out what the authority must consider in deciding whether to issue a provisional consent.

> (12) A council or the Minister in determining whether a provisional consent is to be given shall have regard to the matters under subsection 51 (24) and has the same powers as the approval authority has under subsection 51 (25) with respect to the approval of a plan of subdivision and subsections 51 (26) and (27) and section 51.1 apply with necessary modifications to the granting of a provisional consent.

The added section 53(12.1) makes it clear that the same considerations for the applied for land applies to the retained land.

> (12.1) For greater certainty, the powers of a council or the Minister under subsection (12) apply to both the part of the parcel of land that is the subject of the application for consent and the remaining part of the parcel of land.

The terminology in the legislation is somewhat confusing and not intuitive so first, some definitions.

1. In this guide and in the legislation, "subject land" refers to the land that is both the land for which a consent is sought and also the retained land. It is essentially all of the land under consideration in the application.
2. "Applied for land" or "conveyed land" is that part of the subject land for which consent is sought.
3. Retained land is a new definition and is what we usually consider the land that abuts the land that is the land for which consent is applied. Its statutory definition is as follows:

> Section 50(1.0.0.1) For the purposes of this section and section 53, a reference to "retained land" refers to the whole of a parcel of land that abuts land that is the subject of a certificate given under subsection 53 (42) allowing the conveyance by way of a deed or transfer with a consent that was given on or after March 31, 1979 and that did not stipulate that subsection (3) or (5) applies to any subsequent conveyance or other transaction.

The definition has other purposes in the Act but for our purposes is the remainder of the applicant's land that is not the applied for land.

At times, applicants may want or need a certificate for the retained land. For example, a builder of two adjacent homes obtains a consent for parcel 1 but will sell parcel 2 first and needs a certificate for parcel 2. It is recognized that the practice in Ontario was inconsistent: some consenting authorities granted a certificate for both the applied for land and the retained land; others refused on the basis that the applicant was only entitled to a certificate for the parcel applied for as the land to be conveyed.

Now, under section 53(42.1), an applicant can request a certificate, not only for the applied for land but also for the retained land. The second certificate shall be issued if the applicant asks that it be issued and provides a registrable description for the retained land. (In this guideline, I refer to the certificate for the retained land as the "second certificate.")

The following is the current section 53 provision that authorizes the certificate for the applied for land.

> (42) When a consent has been given under this section, the clerk of the municipality or the Minister, as the case may be, shall give a certificate to the applicant stating that the consent has been given and the certificate is conclusive evidence that the consent was given and that the provisions of this Act leading to the consent have been complied with and that, despite any other provision of this Act, the council or the Minister had jurisdiction to grant the consent and after the certificate has been given no action may be maintained to question the validity of the consent.

The following is the new provision that adds the applicant's entitlement to a certificate for the retained land.

> (42.1) If a consent has been given under this section to a conveyance of a part of a parcel of land and the consent did not stipulate that subsection 50(3) or (5) applies to any subsequent conveyance or other transaction, the clerk of the municipality or the Minister, as the case may be, shall give the same form of certificate described in subsection (42) to the applicant for the retained land resulting from the consent, if the applicant, in making the application for consent,
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> (a) requests that the certificate be given; and
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> (b) provides a registrable legal description of the retained land.

How will this work-what the consenting authority has to do?

First, consenting authorities have to revise their application forms for consents. The form of application for consent needs to be amended. Ontario regulation 197/96 sets out what needs to go in a consent application. There are many different application forms for consents across the province but all of them have the basic requirements set out in Schedule 1 to the regulation.

Sections 14.1 and 14.2 of the regulation now adds two provisions:

1. The application form must now ask if the applicant is requesting a certificate for the retained land. This could be a yes or no checked box on the application.

2. According to section 14.2, if the answer is yes, the applicant must provide a lawyer's statement that there is no land abutting the subject land that is owned by the owner of the subject land other than land that could be conveyed without contravening section 50 of the Act.

The language is somewhat confusing but it works this way. Ordinarily, the public thinks of the subject land as the land for which a consent is sought and the retained land as the land abutting it. However, as I noted above, the regulation defines subject land as both the land for which consent is sought and the retained land and that language is continued in the new section 14.2.

Essentially, the requirement asks for confirmation that when a second certificate is sought, the applicant does not own any land other than the subject land i.e. the land for which a consent is sought and the retained land. The only permitted exception in section 14.2 is if the applicant owns additional land that abuts the subject land provided that that land can be conveyed in compliance with the *Planning Act.*

The legislation makes if more complicated than it really is and it is best explained with these examples.

Example 1
This will be the typical situation where the applicant is seeking a simple consent to create two lots out of one. The applicant does not own any land other than the subject land.

Parcel A consent sought for this parcel	Parcel B the land abutting the land for which consent is sought This is the retained land.

Here, Parcels A and B are the subject land and in accordance with the regulation, the applicant's lawyer must state that there is no land abutting the subject land that is owned by the owner of the subject land. That will be most cases and very straightforward. The lawyer just states that the owner does not own any land other than what will be the two parcels.

Example 2
The second example below is to address the remote possibility that the applicant owns more than the just the subject land A and B and owns another parcel of abutting land as well. This scenario is what the required statement is attempting to address.

In this example, the owner owns A, B and C. The "subject land" is parcels A and B. A is the applied for land and B is the abutting retained land. The regulation wants clarification that there is no land that is owned by the owner of A and B (the subject land) that abuts the subject land that cannot be conveyed in compliance with the Act. Since Parcel C has been previously conveyed with consent, the statement can be made. A second certificate can issue for parcel B.

It will be only the unusual case, in my view where an owner does not include all of its land in the application and the part not included is otherwise merged with the subject land and is not separately conveyable in accordance with the *Planning Act.*

Parcel A consent sought for this parcel	
Parcel B Abuts Parcel A and C but is merged with Parcel A. it is the retained land.	Parcel C Abuts Parcel A and B but parcel C was previously conveyed with an unstipulated consent.

Example 3
In this common example where one application is intended to create 3 parcels of land, not only will a second certificate be available but so is a third certificate.

Parcel A	Parcel B	Parcel C

Parcels A, B and C are the subject parcel. B is the applied for parcel. There is no land abutting the subject parcel i.e. all of A, B and C are owned by the applicant. The lawyer's statement can again be given and a second and third certificate can be issued for the parcels that are the retained land.

The legal description of the retained land.

It follows that a request for a second certificate indicates that the applicant will want to register it on title and as a result, it requires a registrable description. In many cases, the legal description of the retained land may be identified as part on a reference plan.

Alternatively, the legal description for the retained land may not be available from the land registry office until the first certificate is registered and the land registrar creates a new PIN for the consented parcel and the retained land. (This might occur where a farm house is severed from a large farm holding and the retained farm holding will be described by all of the land except the farm house property).

There is no reason for or requirement that the two certificates to be issued at the same time. If the request is made, a certificate must be issued on the production of a registrable legal description for the retained parcel. The description may be available at the same time as the issue of the first certificate or it may be available only after the creation of a PIN for the retained parcel.

Note to consenting authorities: A request for a second certificate is not considered a second application deserving of a second application fee. It was noted that, but for lot additions applications, a consent application always considers the viability of both the applied for land and the retained land. Clearly, once the applied for land is dealt with, the retained land stands separately conveyable as well and so it is implicit that the planning and other consultations consider both parcels of land for compliance with land severance criteria. The request for a second certificate is administrative only and does not involve any further due diligence than if a second certificate was not asked for.

CERTIFICATE OF CANCELLATION

There are rare times when an owner owns property that is the subject of an unstipulated consent and wants it cancelled. Remembering that once land is conveyed with a consent, section 50(12) applies and the owner never needs another consent to deal with the identical parcel of land. As a matter of law, it is a separately conveyable parcel of land…….forever.

But there may be times when a prior consent is standing in the way of further uses of the property. Two examples. Parcel A was conveyed with consent. The abutting owner of parcel B is seeking a consent to convey a small strip of his land as a lot addition to Parcel A. The consenting authority notes that if the owner of A plus the strip from B ever transferred A alone, it would leave a small strip of land as a stand-alone parcel. This would be an unintended consequence and potential concern for the application for the lot addition. An ideal solution with the owner of A's approval would be the cancellation of the certificate for A.

Similarly, an owner owns two abutting parcels of land, one of which has the benefit of a prior consent. Owner wants to develop the two properties as one but the planning authorities are concerned that the owner could still transfer the consented half of the property when the intention is that it be a merged property with the abutting parcel.

Section 53(45) permits an owner of a parcel land previously conveyed with an unstipulated consent to apply for the issuance of a certificate of cancellation.

> (45) An owner of land that was previously conveyed with a consent, or the owner's agent duly authorized in writing, may apply to the council or the Minister, whichever is authorized to give a consent in respect of the land at the time of the application, for the issuance of a certificate of cancellation of such consent. The certificate must provide that subsection 50(12) does not apply in respect of the land that was the subject of the consent and that subsection 50(3) or (5), as the case may be, applies to a subsequent conveyance or other transaction involving the land.

What is the effect of a cancellation certificate?

The effect of the cancellation certificate is that from the time of registration on title, the parcel is considered no longer to have been conveyed with an unstipulated consent and section 50(12) no longer applies to the parcel. It causes the merger of the previously conveyed property with any abutting land that the owner might own. Section 53(49) provides as follows:

> (49) After the registration of a certificate of cancellation referred to in subsection (45),
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> (a) subsection 50(3) or (5), as the case may be, applies to any subsequent conveyance or other transaction involving land that is the subject of the certificate despite subsection 50(12): and
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> (b) for the purposes of subsection 50(3) or (5), as the case may be, the land that is the subject of the certificate is deemed not to be land that was previously conveyed by way of a deed or transfer with a consent.

To be clear, cancelling a consent does not affect anything that happened previously. It only affects transactions subsequent to the registration of the cancellation certificate. As section 53 (45) states "The certificate must provide that subsection 50(12) does not apply in respect of the land that was the subject of the consent and that subsections 59(3) or (5), as the case may be, applies to a subsequent conveyance or other transaction involving the land.

What is the procedure and the criteria?

It is likely that such applications will be rare and many consenting authorities may never see such an application. There is no mandated form of application or required components of an application. The issues that might apply in a consent or even a validation application are not applicable. The cancellation causes merger, and not the creation or validation of a parcel of land. A simple letter applying a cancellation certificate is likely all that is needed to initiate the process.

> (47) An application referred to in subsection (45) shall be accompanied by any prescribed information and material and such other information or material as the council or the Minister, as the case may be, requires.

There is no prescribed information.

What information does the authority need? Other than a letter requesting cancellation, the application should include information about the title, why the cancellation certificate is being sought, and evidence of the certificate to be cancelled that includes the legal description of the property, all of which is included in the transfer for which the consent was originally given.

What kind of fee would be appropriate? Given that the goal of cancellation is the merger of parcels and not the creation of parcels, there is seemingly no need for consultation, conditions or otherwise. The consent that was given is akin to an asset, a benefit that applies to a parcel of land. One would think the fee represents the cost of processing the application and as noted below, since there is no planning input involved, one would think it would be limited to simple administrative costs of opening a file and issuing a certificate.

Are there or should there be any criteria? No. Logically, the benefit of the certificate of consent belongs to the owner. And if the owner wants to give up that benefit that will result in a merger of its consented parcel with abutting land, that is his or her right. It causes merger and there does not seem to be a good reason why a municipality would want to avoid or prevent parcels of land from merging.

Does it involve a planning policy issue? No for the same reasons. The default (as one might term it) is to have merger and cancelling a certificate will result in merger and the creation of a larger parcel, not a smaller one.

Is there a need for circulation, notices, posting, etc.? There is no statutory requirement and logically, none is needed. Statutorily, those are required for consent applications. The cancellation of a certificate does not affect planning issues, neighbourhoods, traffic, official plan, zoning or otherwise. Any development matters that might arise from a cancellation of a consent is not an issue for the consenting authority. It is for the owner to satisfy other municipal departments on zoning and other development issues but they are not a function of the consent that is sought to be cancelled.

What does the certificate say?

Section 53(45) says what the certificate has to say. The certificate needs only to track the language of the section as noted below.

> (45) …… The certificate must provide that subsection 50(12) does not apply in respect of the land that was the subject of the consent and that subsection 50(3) or (5), as the case may be, applies to a subsequent conveyance or other transaction involving the land.

A form of cancellation certificate is attached.

Who has jurisdiction to issue cancellation certificates?

The amendment revises the several provisions in the Act that grant authority to councils that issue consents and by delegation to committees of adjustment and land division committees to issue certificates of cancellation. The sections dealing with jurisdiction are set out on schedule to this guideline.

AMENDING APPLICATIONS--ANYTIME UNTIL A DECISION IS MADE

Some authorities take the view that once a consent application has been filed, it cannot be amended but, instead, the process must begin anew. Amendments can range from simple omissions such as forgetting to include the need for a right of way for access, or adjusting a boundary line to comply with zoning requirements, to more significant changes for the relief sought.

The more rigid response to requests to amend may cause greater expense and delay to applicants and the duplication of work by authorities. The amendment clarifies that amendments can be made to applications at any time prior to a decision with discretion to the authority to determine how best to address planning issues if necessary.

In particular, on a request to amend, the authority can impose terms that may include requiring more information and extending the times set out in the Act for conducting a hearing. Some amendments may made at the hearing itself where the authority can decide if there is a need for more information or further circulation of the application to responding departments. Others may be made much earlier in the process. Where an amendment is minor, or is well understood by the authority, there may be no need for terms at all.

The key to the amendment is to give authorities the discretion and ability to focus on the planning issues and not be distracted by what might be a perceived legal or technical limitation on their ability to make a proper planning decision.

> Amendment to application
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> (4.2.1) An application may be amended by the applicant at any time before the council or the Minister gives or refuses to give a consent.
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> Terms
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> (4.2.2) If an application is amended by the applicant, the council or the Minister may impose such terms as the council or Minister considers appropriate, including terms, (a) requiring the provision of additional information and material in relation to the amendment; and (b) specifying that the time period referred to in subsection (14) is deemed not to have begun until the later of, (i) the date the application was amended, and (ii) if additional information and material was required under clause (a), the date on which all the information and material was provided.
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> Fees
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> (4.2.3) For greater certainty, the council or the Minister may include fees in respect of an amendment to an application in its fees established under section 69 or 69.1, as the case may be.
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> Other
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> (4.2.4) For greater certainty, subsection (4.2.1) shall not be construed as preventing a person from amending any other type of application under this Act.

PURCHASER CAN ALSO APPLY FOR CONSENT

Section 53(1) permits only an owner or a mortgagee or their agent to apply for consent. At times, a property is sold where it is the purchaser that seeks to bear the expense of obtaining land division. Procedurally, the purchaser can only act as the owner's agent and not bring the application in its own right. The right of a purchaser to bring an application is now permitted provided that the purchaser provides to the authority that portion of its agreement of purchase and sale that gives the purchaser the right to apply.

> 53(1) An owner, chargee or purchaser of land, or such owner's, chargee's or purchaser's agent duly authorized in writing, may apply for a consent as defined in subsection 50 (1) and the council or the Minister, as the case may be, may, subject to this section, give a consent if satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality.
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> (1.1) For the purposes of subsection (1), a purchaser of land is a person who has entered into an agreement of purchase and sale to acquire the land and who is authorized in the agreement of purchase and sale to make the application.

Section 18.1 is added to regulation 197/96 to assist the authority in assessing whether the purchaser has the right to bring the application. Simply, the purchaser applicant needs only to provide to the authority "copy of the portion of the agreement of purchase and sale that authorises the purchaser to make the application".

VALIDATION CERTIFICATE

Like cancellation certificates, there is no mandated or regulated form for validations of title under section 57. Some consenting authorities have their own forms; other simply ask for the filing of their consent application form with appropriate alterations to suit the circumstances.

The information required on the consent application form (which is mandated by regulation 197/96) is not appropriate for validations because there is rarely if ever land abutting the land to be validated. More often than not, using the consent forms involves noting that some information required for consents is "not applicable".

Validations correct or make effective prior registered instruments that contravened the *Planning Act.* Typically, the land involved is already recognized practically as a separate parcel of land. Validations of title involve legal ownership and title and usually not a planning issue involved in validations. As a result, the authority needs to understand the history of the ownership of the property and how the error occurred. Rarely is there a planning issue with validations.

Note to consenting authorities: Consenting authorities should consider instructing intake personnel that validation applications are not the same as consent applications and are not subject to the same rules. Such applications perhaps should be "flagged" for further senior review. For example, a sworn affidavit by the owner or agent is required by the regulations on a consent application. There is no such requirement for validation applications. Terminology on consent applications is not applicable. There is no abutting land that is necessarily relevant. Similarly, there are no requirements for notices, posting, circulation or rights of appeal. Reference plans are not required if the parcel to be validated already has a registrable legal description and PIN. Section 53, which addresses consent applications has no application to validations.

Validations involve a different process because the considerations are different. With validations, authorities are fixing a prior usually technical error in conveyancing. Planning issues with validations are rare. Unlike consent certificates, validation certificates have no future on going benefit. Consents contemplate future dealings. Validations only validate or cure past dealings.

Section 57 of the *Planning Act* used to require that no validation could occur without compliance with prescribed criteria which were set out in Regulation 144/95. The prescribed criteria were that the property conform with Official Plan and local zoning bylaws. That requirement has been repealed.

As an aside and curiously, neither consent applications nor validation applications require compliance or conformity with official plans and zoning. Validation applications did but do not any longer. Recognizing a past error and what was the status quo was more onerous to owners and applicants than a land division consent for future use. Validations then often required usually unnecessary minor variance or OP amendments in order to qualify. They do not any longer.

Section 57(6) and (7) of the *Planning Act* and the prescribed criteria Regulation 144/95 are repealed.

What then are the criteria for validations? And by extension for consents?

Section 57(6) now provides

> Criteria for certificate
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> (6) No certificate shall be issued under subsection (1) unless the land described in the certificate of validation conforms with the same criteria that apply to the granting of consents under section 53.

This is important. There is now no need to conform to OP and zoning for validations but the authority need only consider the same criteria that apply to consents.

That invites a critical question. What are the statutory criteria for the granting of consents? Some committees through the advice and recommendation of their local planners believe that it is mandatory that consents be issued only if there is conformity with OP and zoning. This adds to expense, and delay for applicants with often, no particular benefit to the municipality.

Statutorily, these are the requirements for consents and validations.

Section 53(1) says that a consent can issue if the authority is "satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality."

The first criterion for the authority is the consenting authority being satisfied that no plan of subdivision is required. If the decision is that a plan of subdivision is not required, are there then any statutory criteria? The criteria for consents and now for validations as well are set out in sections 53(12) and (13) of the Act as follows:

> (12) A council or the Minister in determining whether a provisional consent is to be given shall have regard to the matters under subsection 51(24) and has the same powers as the approval authority has under subsection 51 (25) with respect to

the approval of a plan of subdivision and subsections 51 (26) and (27) and section 51.1 apply with necessary modifications to the granting of a provisional consent. 1994, c. 23, section 32.

(12.1) For greater certainty, the powers of a council or the Minister under subsection (12) apply to both the part of the parcel of land that is the subject of the application for consent and the remaining part of the parcel of land. 2021, c. 25, Sched. 24, section 4 (4).

The critical question of the section 51(24) checklist of criteria is whether anything is mandatory? The language of section 51(24) seems to indicate that nothing in the list is mandatory including compliance or conformity with either Official Plan or zoning bylaws.

The preamble to the criteria for plans of subdivision in the Act makes it clear that it is up to the authority to decide what is relevant to their decision. There is no absolute precondition to approval of a subdivision and by extension to the granting of consents or validations. The section requires that the authority have "regard" to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and regard as well to a number of other considerations but it does not mandate conformity with Official Plans and does not even mention compliance with zoning bylaws. As to conformity with official plans, the list only requires that consideration be given to "whether" the plan conforms to the official plan and not that the plan must conform.

(24) In considering a draft plan of subdivision, 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;

(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*.

Do validation of title applications deserve a different approach than with consents?

While the criteria for both consents and validations are the same, there are often different considerations to the decision making process. Usually, actual ownership of a property has changed. Usually, the property involved has been recognized by the municipality, taxing and other authorities including the land registry office as a separate and distinct property. Usually, the property has been historically separate from abutting lands and has its own identity and services. Usually, it has already been developed and with validations, usually, there is no construction, development, building, or other improvements involved. The validation application validates the legal title to a property already identified for all purposes as separate. The validation cures the title problem that arose as a result of a technical contravention of the *Planning Act.*

This writer hopes that the consenting authorities will see such applications as having a purpose different from a consent application for future land division and development.

FREQUENTLY ASKED QUESTIONS

Mergers and the death of a joint tenant

In the past, if parcel 1 was owned by A and B as joint tenants and parcel B was owned by A alone to keep them separate and then B died, there was an automatic merger as a matter of law.

PARCEL A Owned by Mr and Mrs. as joint tenants. Mrs. has died.	**PARCEL B** Owned by Mr alone

That is no longer the case. A new exception in sections 50(3) and (5) provides that a person can deal separately with a parcel of land if the land is the whole of a parcel that was previously owned by, or abutted land previously owned by joint tenants and the ownership would have, but for this clause, merged in the person as a result of the death of one of the joint tenants.

Using the above example. The survivor, Mr. qualifies for the exception for both parcels. The land was previously owned by joint tenants (parcel A) or abutted land previously owned by joint tenants (parcel B) and if it were not for this clause, the ownership would have merged as result of the death of Mrs.

Does it apply to deaths prior to January 1, 2022? The *Planning Act* has never directly answered the question of retroactivity of its provisions. Given that legislation is intended to be remedial and this new section was inserted to solve a practical unfairness in the Act arising from the unexpected or unplanned for death of one of the joint owners, a fair and reasonable interpretation indicates retroactivity. From a planning policy viewpoint, but for the death of the joint tenant, the properties would always have been separate. There does not seem to be a good reason to prefer merger as a result of an act of fate or bad timing. Lawyers can come to their own conclusions on the issue and ensure validity in a subsequent transaction by signing *Planning Act* statements.

> (a.1) the land is the whole of a parcel of land that was previously owned by, or abutted land previously owned by, joint tenants and the ownership would have, but for this clause, merged in the person as a result of the death of one of the joint tenants;

Are second certificates required in every consent application?

No, and the likelihood that such requests will not be typical, except perhaps where an owner is unsure which of two properties will be dealt with first. Even then, it may not be required.

The Act has been amended to now permit land that is retained land i.e., land that abuts land previously conveyed with consent to be an exception to the prohibition.

Section 50(3b) and (5a) now provides an exception to the abutting land rules where the land in question abuts an identical parcel of land that was previous conveyed with a consent given after March 31, 1979.

PARCEL A Mr. owns It was previously conveyed with consent	**PARCEL B** Mr. owns It has never been conveyed with consent.

In this example, Mr. owns both A and B; A was previously conveyed with consent. B has never been conveyed with consent. Until the amendment, A could be dealt with as a separate parcel because it was identical to land previously conveyed with consent and got the benefit of section 50(12). However, B was never previously conveyed with consent and Mr. owns abutting land. B could not be conveyed separately unless Mr. did a work around and change the ownership of A.

Now, land previously conveyed with consent and land abutting land previously conveyed with consent can be dealt with separately. It gives real meaning to "once a consent, always a consent" in that a consent now creates two separate parcels of land and it does not matter what the order is in the dealing, so long as one of the two has been conveyed, even to oneself with consent.

Why is March 31, 1979 relevant. Until that date, consents could be given for lot additions and the concern was that this rule would make lot additions separate parcels of land. While the concern involved a highly remote possibility, the rule only applies to consents given from and after March 31, 1979.

> (b) the person does not retain the fee or the equity of redemption in, or a power or right to grant, assign or exercise a power of appointment in respect of, any land abutting the land that is being conveyed or otherwise dealt with other than,
>
> > (i) land that is the whole of one or more lots or blocks within one or more registered plans of subdivision,
> > (ii) land that is within a registered description under the Condominium Act, 1998, or
> > <u>(iii) land that is the identical parcel of land that was previously conveyed by way of a deed or transfer with a consent given under section 53 or was mortgaged or charged with a consent given under section 53, either of which consent was given on or after March 31, 1979 and did not stipulate that this subsection or subsection (5) applies to any subsequent conveyance or other transaction;</u>

Reference plans of survey; when you need them, when you don't

There is an inconsistent practice in Ontario about requiring a reference plan of survey with every application for consent and sometimes, even for validations. Reference plans of survey can be very expensive and can cause delay in completing a matter, often because of weather or even the level of business of local surveyors.

The need for reference plans arose in the land registry offices. Historically, land was described by a metes and bounds legal description, often prepared by a land surveyor. The legal description described the land by compass bearings and distances and except perhaps in a simple rectangular parcel of land could be very complicated.

The applicable legislation was amended in the 1970s to require that any new legal description usually arising from a division of land required a reference plan of survey that would illustrate the property in question and describe it as a "part" on the plan. Reference plans were registered with the number of the land registry office, followed by the letter R followed by a sequential number such 66R-12345.

They differ clearly from land titles plans of subdivision with the prefix M such as 66M and a reference to "lots" and "blocks", roads and reserves. They typically contain a warning that they are not registered plans of subdivision.

In typical consent applications where a land division is occurring i.e., where an existing parcel of land is being divided into new separate parcels that have never had their own specific legal description or where new easements or rights of way are being created, a reference plan is required for registration on title. This is important. The reference plan requirement is a land registry office requirement; it is not a requirement for consenting authorities unless a new legal description is being created on the application. Consenting authorities typically need a sketch to understand the land division and if consent is granted and a new legal description is to be created in the land registry office, then the authority needs a reference plan to identify the land for land registration purposes.

But if there is no new legal description, typical with technical severances and validations, no reference plan is necessary. Technical severances involve separate parcels of land, historically separate for all purposes that get merged because the owner of one parcel also owns the other. While owners take pains to keep them under separate ownership and avoid merger, merger can happen inadvertently for example through lawyer's mistake or as a matter of law. But each property retains its own PIN or parcel register and individual legal description. Similarly, with validations, there was merger of two previously separate parcels but one of the two parcels has since been dealt with separately resulting in a contravention of the *Planning Act* and the resulting voiding of the transfer or mortgage on title. Again, that separate parcel that requires validation has its own PIN and legal description and so, no reference plan of survey is required for registration.

Don't I need a reference plan to confirm compliance with zoning bylaws?

Before answering that question, the better question is does the consenting authority need to confirm compliance with zoning bylaws. It may the local municipality's planner's mindset to want confirmation of compliance with zoning bylaws but there is nothing in the criteria for consents or validations that a parcel that is the subject of an application must conform to local zoning. This is particularly important on applications involving long standing buildings requiring technical consent of validation where the property is clearly a legal non-conforming use.

If a municipality's planner wants to be satisfied about zoning compliance, a survey may suffice. Although it seems that there is much more to zoning bylaws than side yards and setbacks that

surveys or reference plans will not answer. Which is why I don't quite understand the knee jerk requirement that some municipalities impose that there be a reference plan when one is not really necessary for the consent application. A municipality may prefer a survey but again, reference plans are land registry requirements where a new legal description is being created.

Imposing conditions on severance consents

Many authorities have what they call their "standard conditions". At times, the conditions are not relevant to the subject of the planning decision and yet are imposed on the applicant before it can implement the planning decision.

Some of them may impose unnecessary hardship and expense to the applicant. Some of them take advantage of the applicant in the application process and are unrelated to the purpose of the application. Some just cannot be satisfied.

Examples:
The obligation to consolidate two parcels or PINs into one.

Consolidating PINs is in the jurisdiction of the land registry office and is not automatic. Land titles and Teranet cannot consolidate two PINs that are not identical in quality or character. Most common, they cannot consolidate two PINs where one is an absolute title PIN and the other is a converted qualified PIN. Absolute titles have certain characteristics in the land titles system; converted qualified titles (LTCQ PINs) have very different characteristics and they do not match and therefore cannot be consolidated.

Before you impose such a condition, ensure by a review of the two PINs that are before you that they are of the same type.

Requiring road widenings or other municipal conveyances.

Planners reviewing applications often see an opportunity to take something for the municipality that they would not be otherwise able to obtain but for the application for consent and the imposition of a condition of granting consent. Consenting authorities often go along and impose the condition because the planning staff asks for it, even though it is not relevant to the application itself. Road widenings are a common "ask", even though the road widening has nothing to do with the planning decision before the authority.

In a recent case where the applicant appealed a road widening condition, the LPAT made it clear that the requirement was not relevant to the planning decision before it, the municipality was taking advantage of the situation and set aside the condition.

Schedule of sections of the act regarding delegated authority for cancellation certificates.

(46) A delegation by the Minister under section 4 or by a council or planning board under section 5 of the Minister's authority for the giving of consents under this section shall be deemed to include the authority to issue certificates of cancellation under subsection (45). 2021, c. 25, Sched. 24, s. 4 (13).

Same, application

54 (2.1) If council has delegated its authority to give consents under subsection (1), (1.1), (2), (2.3), (4) or (5), that delegation shall be deemed to include the authority to issue certificates of cancellation under subsection 53 (45) and to issue certificates of validation under section 57 in respect of land situate in the lower-tier municipality. 1993, c. 26, s. 61 (1); 1994, c. 23, s. 33 (3); 2002, c. 17, Sched. B, s. 21 (2).

Delegation to committee of council, etc.

(4) Except as delegated under subsection (1) or (1.1), the authority or any part of such authority of the council of an upper-tier municipality may be delegated by the council to a committee of council, to an appointed officer identified in the by-law by name or position occupied or to a land division committee. R.S.O. 1990, c. P.13, s. 54 (4); 1994, c. 23, s. 33 (7); 2002, c. 17, Sched. B, s. 21 (3).

Delegation, single-tier municipalities

(5) The council of a single-tier municipality authorized to give a consent under section 53 may by by-law delegate the authority of the council under section 53 or any part of that authority to a committee of council, to an appointed officer identified in the by-law by name or position occupied, to a municipal planning authority or to the committee of adjustment. 2002, c. 17, Sched. B, s. 21 (4).

Committee of adjustment

(6) Where, under subsection (2) or (5), a committee of adjustment has had delegated to it the authority to give a consent, section 53 applies with necessary modifications and subsections 45 (4) to (20) do not apply in the exercise of that authority. 1994, c. 23, s. 33 (9).

54(6.1) Where, under subsection (2) or (5), a committee of adjustment has the authority to issue certificates of cancellation under subsection 53 (45) and the authority to issue certificates of validation under section 57, subsections 45 (8) to (8.2) apply in the exercise of that authority, but subsections 45 (4) to (7) and (9) to (20) do not apply. 2021, c. 25, Sched. 24, s. 5 (3).

Conditions

(7) A delegation of authority made by a council or a municipal planning authority under this section may be subject to such conditions as the council or the municipal planning authority by by-law provides and the council or the municipal planning authority may by by-law withdraw the delegation of authority but, where authority delegated under subsection (1) or (1.1) is withdrawn, all applications for consent, for the issuance of a certificate of validation under section 57 or for the issuance of a certificate of cancellation under subsection 53 (45)". made prior to the withdrawal shall continue to be dealt with as if the delegation had not been withdrawn. 1994, c. 23, s. 33 (10).

District land division committee, delegation

55 (1) The Minister by order may constitute and appoint one or more district land division committees composed of such persons as he or she considers advisable and may by order delegate thereto the authority of the Minister to give consents under section 53, to issue certificates of cancellation under subsection 53 (45) or the authority to issue certificates of validation under section 57 in respect of such lands situate in a territorial district as are defined in the order. R.S.O. 1990, c. P.13, s. 55 (1); 1993, c. 26, s. 62 (1).

VALIDATION CERTIFICATES UNDER SECTION 57 OF THE PLANNING ACT

[There is no prescribed form for a certificate of validation. The following is a suggested form tracking the language of section 57(1). It may be registered on title as a notice or a certificate.]

CERTIFICATE OF VALIDATION

Section 57 of the *Planning Act*

A contravention of section 50 or a predecessor of it, or of a by-law passed under a predecessor of section 50, or an order made under clause 27(1)(b) as it read on the 25th day of June, 1970, of the *Planning Act* being chapter 296 of the Revised Statutes of Ontario, 1960 or a predecessor of it, does not have and shall be deemed never to have had, the effect of preventing the conveyance of, or creation of any interest in the parcel of land described as follows.

[insert the legal description of the title to be validated]

This Certificate of Validation is issued in accordance with Section 57 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, and the decision of the Committee of Adjustments [or council] of the [insert municipality] dated [insert date of decision]

Dated [insert the date of signing of the certificate of validation]

_____

Title

Application

CANCELLATION CERTIFICATES UNDER SECTION 53(45) OF THE PLANNING ACT

[There is no prescribed form for a certificate of cancellation. The following is a suggested form tracking the language of section 53(45). It may be registered on title as a notice or a certificate.]

CERTIFICATE OF CANCELLATION

Section 53 (45) of the *Planning Act*

Subsection 50(12) of the *Planning Act* does not apply in respect of the land described as follows:

[insert legal description of the land that was the subject of the consent].

Subsection 50(3) or (5) applies to a subsequent conveyance or other transaction involving the land.

This Certificate of Cancellation is issued in accordance with Section 53(45) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, and the decision of the Committee of Adjustments [or council] of the [insert municipality] dated [insert date of decision]

Dated [insert date of signing the certificate of cancellation]

_____

Title

LRO # 51 Certificate

Receipted as BC1B21917 on 2021 09 28 at 10:30

The applicant(s) hereby applies to the Land Registrar

yyyy mm dd Page 1 of 2

Properties

PIN S6030 - 0009 LT

Description PT LTS A & B PLS OF COOK ST PL 06 AS IN RC13####0 ; TOWNSHIP AMENDED ON JULY 13, 2020 BY LRO#2

Address COOKSTOWN

Party From(s)

Name

Address for Service [redacted], Cookstown, Ontario L0L

This document is not authorized under Power of Attorney by this party.

Statements

Schedule: See Schedules

Signed By

1500-15 Yonge St. Toronto M5C 2W7 acting for Party From(s) Signed 2021 09 03

Tel 416-868-1168

Fax 416-868-0869

I have the authority to sign and register the document on behalf of the Party From(s).

Submitted By

1500-15 Yonge St Toronto M5C 2W7 2021 09 28

Tel 416-862-1168

Fax 416-862-0306

Fees/Taxes/Payment

Statutory Registration Fee $66.30

Total Paid $66.30

File Number

Party From Client File Number: 48820-0

(Attach certificate of validation or certificate of cancellation to this document and register.)