

THE CORPORATION OF THE TOWNSHIP OF LAKE OF BAYS



REPORT

TO: Mayor & Members of Council
FROM: Stefan Szczerbak, Planner
DATE: March 24th, 2009

RE: PLAN OF SUBDIVISION: S2006-7 (Muskoka River Shores)
Applicant: 2025710 Ontario Limited
Agent: Wayne Simpson and Associates
Part Lots 17 & 18, Concession 6, McLean Ward
Roll No. 040-001-03800
Civic Address: Heney Lake Road

RECOMMENDATION:

That Council adopt a resolution directing staff to forward correspondence to the District of Muskoka's Planning and Economic Development Department which advises that the Township has no objection to the draft approval of the plan of subdivision application S2006-7 (Muskoka River Shores) located on Lots 17 & 18, Con. 6, McLean Ward, now in the Township of Lake of Bays subject to the following conditions:

1. That the Plan of Subdivision be "red-lined" to include a separate Block containing the proposed driveway for the purpose of providing access to the proposed lots and also to ensure the future landowners shared the future maintenance of the road to each of the proposed lots.
2. Easements and/or rights-of-ways for access, utilities, drainage or other purposes shall be granted to the Township of Lake of Bays, or any other authority or party as may be required.
3. Prior to final approval being granted, the owner shall pay to the Township cash-in-lieu of all of the parkland dedication in accordance with the Planning Act, R.S.O., as amended and By-law 04-39 (By-law respecting the conveyance of land for park purposes within the Township of Lake of Bays).
4. Prior to final approval being granted, the portions of this property subject to the Comprehensive Zoning By-law No. 04-181 shall be removed from this By-law and therefore subject to the Development Permit By-law No. 04-180.
5. Prior to final approval being granted, the entire property shall be subject to a site specific amendment to the Development Permit By-law No. 04-181 which shall include at a minimum the following requirements:
 - a. redesignate the open space for its intended use;
 - b. provide specific locations for permitted shoreline structures outside of the identified sensitive fish habitat.

- c. limit permitted shoreline structures to only docks and reduce the distance a dock can project out into the water;
 - d. increase both of the minimum shoreline yard setback and vegetation protection area from the shoreline to 30 metres;
 - e. Increase the minimum shoreline yard setback and vegetation protection area to not less than 15 metres from the identified top of the defined bank on Lots 6 and 7.
6. Prior to final approval being granted, or any site alteration being undertaken, whichever is the earliest, the owner shall provide the Township of Lake of Bays and the District of Muskoka with a satisfactory final stormwater management and construction mitigation plan prepared by a professional engineer. The plan will include, but is not limited to, a coordinated approach for the design and construction of the proposed private driveway, an assessment of the subsurface drainage conditions, and the consideration of applicable Best Management Practices, as described in the preliminary Stormwater Report by Tulloch Engineering dated July, 2006.
7. Prior to final approval being granted, the owner shall ensure that the proposed access to the property is designed by a qualified engineer and that a qualified engineer oversees the construction of the driveway. The construction must follow the recommendations of the Stormwater Management Report required by the previous recommendation No. 6. The construction of the driveway must be located entirely within the Road Allowance between Lots 6 & 7 and confirmed by a professional surveyor. The design and construction must also accommodate the passage of emergency vehicles. The owner shall apply and receive an Unopened Road Improvement Agreement to permit the construction of the driveway on the public road allowance.
8. Prior to final approval being granted, the owner shall enter into a subdivision agreement authorized by the Planning Act, R.S.O. 1990, as amended, with the Township of Lake of Bays and the agreement shall be registered on title and shall provide that the owner agrees to satisfy all the requirements, financial and otherwise, of the Township of Lake of Bays concerning a) the payment of development charges, b) the provision of adequate roads, c) services, d) drainage, e) construction mitigation plans, amongst other matters. Specifically, the subdivision agreement should contain at a minimum the following provisions satisfactory to the Township of Lake of Bays which will:
 - a. require the proposed driveway to the waterfront lots be designed by a qualified engineer and that the engineer and included in the final stormwater management and construction mitigation plan required in Condition No. 4. The road shall be designed and constructed to ensure the safe passage of emergency vehicles. A qualified engineer shall also oversee the construction of the road.
 - b. prior to the registration of this plan, the owner shall have a professional surveyor confirm the driveway be located entirely within the unopened Road Allowance;
 - c. require the owner to establish a road maintenance agreement prior to the conveyance of the proposed lots.
 - d. require the owner to enter into an Unopened Road Improvement Agreement which would include receipt of an entrance permit (if applicable) onto Heney Lake Road to the satisfactory to the Director of Public Works.
 - e. implement the recommendations of the Fisheries Habitat Assessment prepared by FRi Ecological Services dated September, 2004;
 - f. implement the recommendations of the Floodplain Assessment prepared by Wayne Simpson and Associates and reviewed by Bill McMullen; and
 - g. implement the recommendations of the final construction mitigation and stormwater management report required by condition 4.

ORIGIN:

An application for the above noted plan of subdivision has been submitted by Wayne Simpson and Associates, on behalf of 2025710 Ontario Limited on July 27th, 2006 and accepted as a complete application on February 14, 2007. As the District of Muskoka is the approval authority for subdivision applications and in accordance with the Planning Act, the District Planning and Economic Development Committee is required to hold a public meeting respecting the proposed plan of subdivision. A meeting for this purpose is scheduled to be held at the Lake of Bays Community Centre located upstairs at the Baysville Arena on Wednesday April 22, 2009 at 7:00 p.m. Township comments and recommended conditions of approval have been requested prior to this public meeting.

BACKGROUND:

Previous Files:	n/a
Natural Constraints:	Narrow Waterbody; "Type 1" Fish habitat Steep Slopes on the southeasterly portion of the property Cold Water Stream Floodplain Deer and Moose Wintering Habitat
LOB Official Plan:	Waterfront and Rural.
District Official Plan:	Waterfront and Rural.
LOB By-law 04-181:	"Rural (Ru)" Zone
LOB By-law 04-180:	"Waterfront (WR) Development Permit Area"

Site Characteristics:

The subject property is mainly forested and exhibits undulating topography with some areas of exposed rock outcrops. A small portion of the shoreline adjacent to the Muskoka River has been cleared. The southerly portion of this lot, mainly adjacent to the shoreline, contains slopes ranging between 5% and 30%.

Surrounding Uses:

The surrounding lands contain low density residential and rural uses.

ANALYSIS:

Location and Proposal

The subject property is located along the Muskoka River just south of the Community of Baysville (Appendix "I"). This proposal has been submitted to create eight (8) single detached residential lots and one open space block (Appendix "II"). The property is currently accessed from an existing private driveway off Heney Lake Road. Each of the lots are to be serviced by a private water

supply and sewage disposal system. A copy of the draft plan of subdivision is attached to this report.

As the proposed lots range in size from approximately 90 metres (295 feet) to 132 metres (433 feet) of water frontage and are 1.4 to 2.3 hectares in size, the proposed lots meet, and in most cases exceed these minimum requirements set out in the Official Plan (H.41). The subject lands are currently landlocked. However, access to the property is available via an existing private driveway located mainly on the public Road Allowance between Lots 6 & 7. This application proposes to upgrade and relocate the driveway onto the public road allowance and provide rights-of-ways to the proposed lots.

Access

It is the direction of both the Muskoka Official Plan (Section D.10) and Lake of Bays Official Plan (Section C.75) to provide proper, safe, legal and adequate access to the proposed lots. Although the Township Official Plan (Section C.84) does not normally permit the construction of private roads on public road allowances, it would consider such access where it is deemed advisable and acceptable by the Township. As the property is currently accessed via an existing driveway located mostly within this Road Allowance and when considering alternative access to the property is not available due to its location on the Muskoka River (i.e. water access), Council could consider continued access to the proposed lots via an upgraded and relocated driveway located entirely within the public road allowance. This approach would also be consistent with the hierarchy of access options available in the waterfront designation (Section H.27). Alternatively, Council could consider the following options: a) Stop up and convey the road allowance to the owner of the property. This approach is not advisable as it does not conform to Section J.81 of the Official Plan and appears to also cut off potential access to an abutting landlocked parcel of land; b) build this road to municipal standards and open this road to the public. This approach is also not advisable as the continued maintenance of this road would likely fall onto the municipality; and c) enter into an unopened road improvement agreement with the municipality and the construction of the road together with the ongoing maintenance would be the responsibility of the owners of the proposed lots.

If Council agrees with the final option, Section C.84 requires the applicant to enter into an agreement with the Township to ensure such matters as financial contribution, liability insurance, road standards, stormwater management, construction mitigation and maintenance have been adequately addressed. This has been included in the recommended conditions of approval.

With respect to the identified right-of-way (ROW) throughout the subject lands within the draft plan, when describing a proposed ROW on a plan of subdivision, they are typically shown as a separate 'block' within the plan. The block would then be conveyed to the future owners of lots 1-8 together with an appropriate private road use agreement assigning each lot owner with a portion of the maintenance obligations associated with the ROW. Therefore, the plan should also be amended (redlined) to include a separate block to identify the applicable ROW's.

Environmental Considerations

Species at Risk

As part of our review, the Ministry of Natural Resources has identified the subject property as potentially containing habitat of several species at risk. A preliminary Species at Risk Assessment, (Michalski Nielsen and Associates Limited dated January, 2008) was submitted in support of this application. Township staff subsequently retained the firm Glenside Ecological Services Limited to peer review this document to ensure conformity with the Lake of Bays Official Plan and consistency with the Provincial Policy Statement (PPS). The report as concluded that a further detailed

investigation is not warranted due to the unlikelihood that the property contains any habitat of endangered and threatened species or significant wildlife habitat.

Steep Slopes

Schedule D1 "Terrain" of the Township's Official Plan has revealed that portions of the proposed waterfront lots contain steep slopes ranging approximately 5% to 30%. Therefore, the steep slope policies of the Township Official Plan (Sections E.3, E.4 & E.7) and Muskoka Official Plan (Sections F.54 – F.59) would apply. When creating lots in areas containing steep slopes, the direction of both Official Plans is that the development of the lot be carefully undertaken, such that there is no substantial alteration of the landscape, thereby ensuring that there will be no subsequent erosion, slope instability, or increased stormwater runoff into the adjacent water body. A preliminary Stormwater Management and Construction Mitigation Report (Tulloch Engineering, July 2006) and a site visit have confirmed that the steep slopes are generally found on the proposed Lots 6 & 7 in close proximity to the shoreline.

Therefore, it is recommended that future development on lots 6 & 7 be located a minimum 15 metres from the identified top of the slope. This would be implemented through the site specific amendment to the Development Permit By-law No. 04-180 and also identified in the subdivision agreement with the municipality.

Fish Habitat

A review of Schedule C2 of the Township Official Plan has revealed that portions of the shoreline along the Muskoka River (identified as a cold water stream) fronts onto "Type 1 & Type 2" fish habitat. In accordance with the Provincial Policy Statement, the Muskoka Official Plan and Sections D.95 and D.98 of the Township Plan, a Fish Habitat and Shoreline Impact Assessment (Michalski Nielsen Associates – July, 2006) was submitted in support of this application. Generally, the report identifies and provides adequate habitat descriptions and recommends appropriate dock locations for each of the proposed lots. Glenside Ecological Services Limited was also retained to peer review this document to ensure conformity with the Lake of Bay and Muskoka Official Plans and consistency with the PPS. The recommendations of both the fisheries assessment and the peer review are included within the conditions contained in this report.

Flood Prone Lands

The subject lands are currently designated as Flood Prone Lands as identified by the Ministry of Natural Resources (317.18 metres GSC associated with the Muskoka River) and as identified in Section E.19 of the Township Official Plan.

Therefore, in accordance with Sections E.20 and E.22 of the Official Plan, a technical report was submitted by Wayne Simpson and Associates (November, 2006) suggesting that a 30 metre development setback could safely address the flooding hazard. The municipal directed Flood Plain Report (W.J. McMullen, July, 2007) generally confirmed this suggestion and also recommended the following principles:

1. that the flood level at elevation 317.18 metres be used to define flood prone lands on this property;
2. that this flood elevation or the 30 metre setback line, whichever is the greater distance from the river bank of the South Muskoka River, be surveyed and clearly marked with stakes on each lot in the proposed subdivision; and
3. no development should take place within the 30 metre setback area or below the 317.18 metre estimated flood level on the lots on this property.

These conclusions have been incorporated into the recommended conditions of approval.

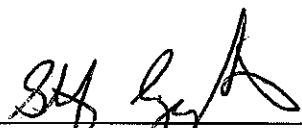
Narrow Waterbody

Schedule D2 of the Township's Official Plan has identified that the shorelines of the subject property are located within a narrow waterbody. Therefore, Sections E.12 and E.14 apply when considering the creation of new lots adjacent to a narrow waterbody. Techniques include the requirement of increase water frontages (minimum 90 metres), increased shoreline yard setback for residential structures, retention of natural shorelines and limitations on the location and size of permitted shoreline structures. Accordingly, these techniques have been addressed and appropriately included in the recommended conditions.

CONCLUSION

Subject to the proposed conditions, the proposed draft plan of subdivision would generally conform to both the District and Township Official Plans, and be consistent with the PPS.

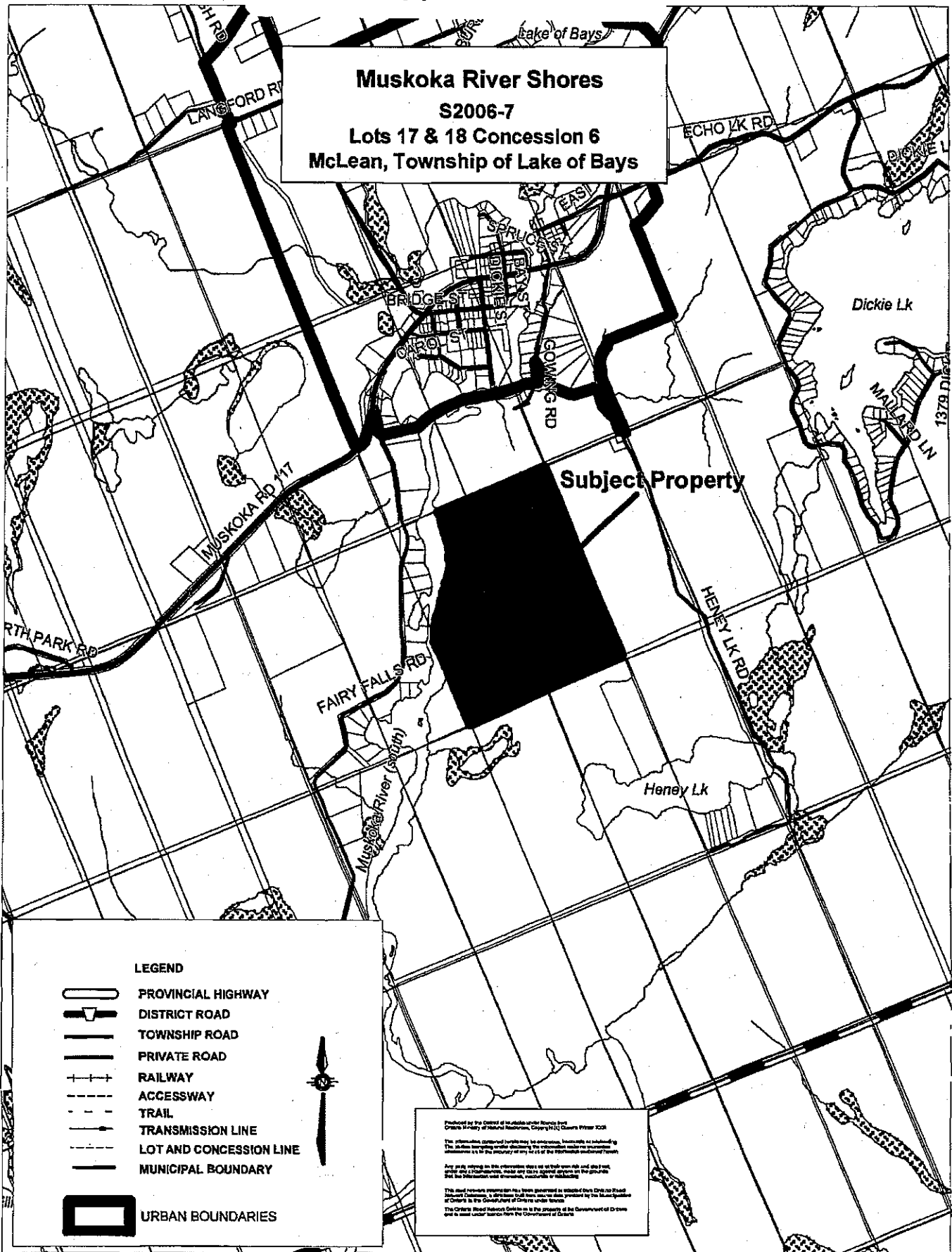
Respectfully submitted by,



Stefan Szczerbak, M.Sc, RPP, MCIP
Planner

Appendix 'I'

**Muskoka River Shores
S2006-7
Lots 17 & 18 Concession 6
McLean, Township of Lake of Bays**



LEGEND

- PROVINCIAL HIGHWAY
- DISTRICT ROAD
- TOWNSHIP ROAD
- PRIVATE ROAD
- RAILWAY
- ACCESSWAY
- TRAIL
- TRANSMISSION LINE
- LOT AND CONCESSION LINE
- MUNICIPAL BOUNDARY
- URBAN BOUNDARIES



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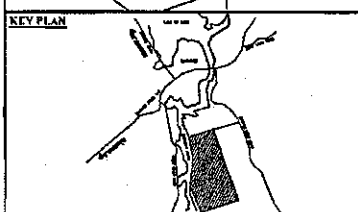
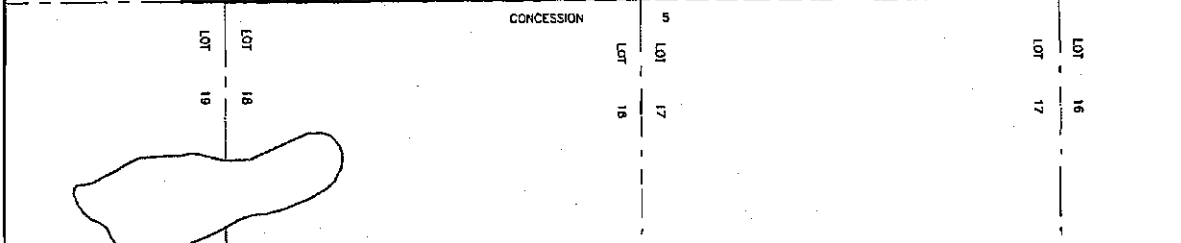
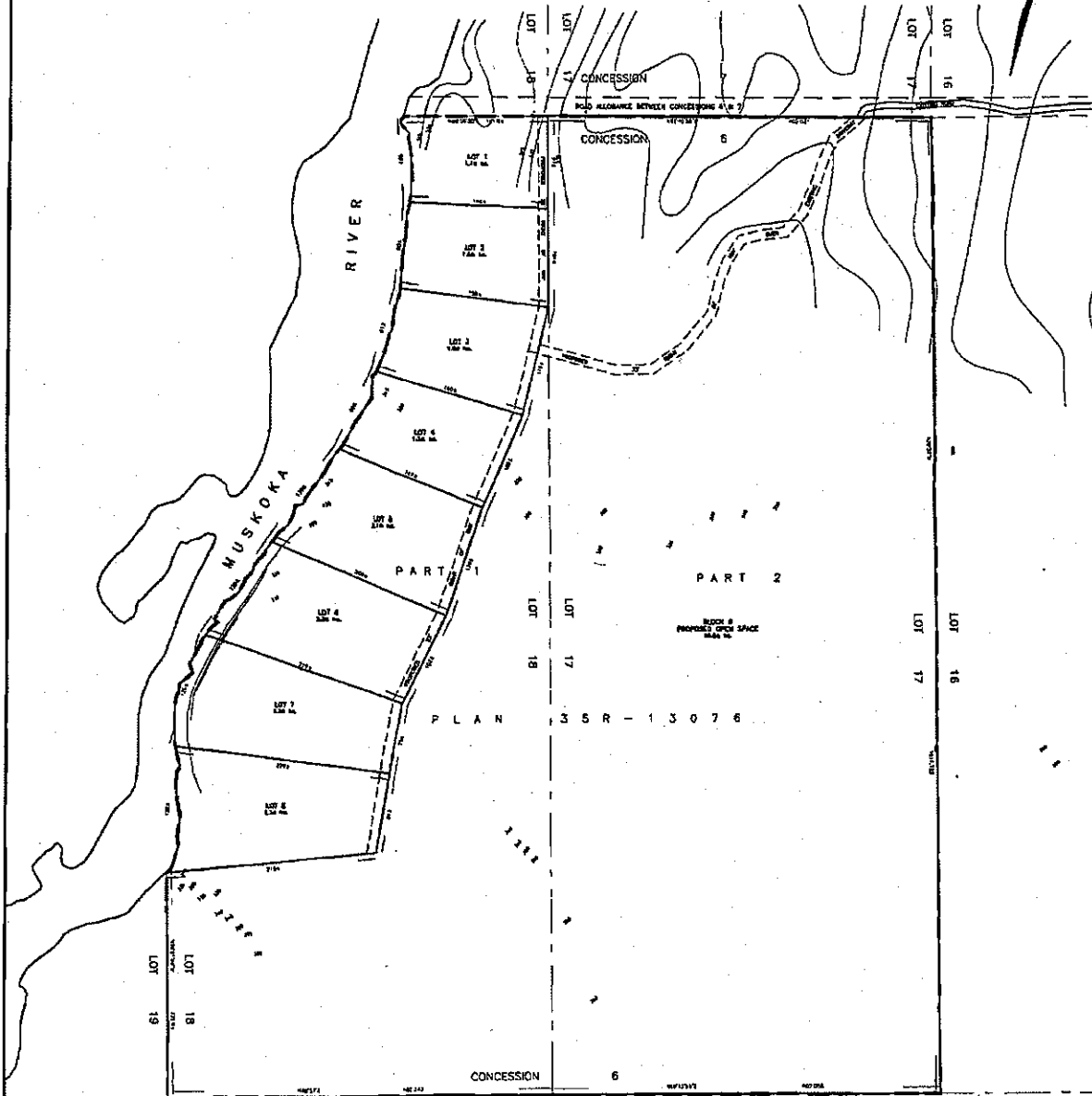
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Appendix 'II'

MUSKOKA RIVER SHORES

DRAFT PLAN OF SUBDIVISION

ALL OF LOT 17 and PART OF LOT 18, CONCESSION 6,
TOWNSHIP OF McLEAN, now in the
TOWNSHIP OF LAKE OF BAYS
DISTRICT MUNICIPALITY OF MUSKOKA
being PART 1 and PART 2 on 35R-13075



OWNER'S CERTIFICATE
I, the undersigned, being the registered owner of the above described property, do hereby certify that the above described property is as shown on the draft plan of subdivision and key plan and that the same is in accordance with the provisions of the Planning Act, R.S.O. 1990, c. P. 22, as amended.

SURVEYOR'S CERTIFICATE
I, the undersigned, being a duly qualified and licensed surveyor, do hereby certify that the above described property is as shown on the draft plan of subdivision and key plan and that the same is in accordance with the provisions of the Planning Act, R.S.O. 1990, c. P. 22, as amended.

OTHER INFORMATION

1. ADDITIONAL INFORMATION REQUESTED UNDER SECTION 31(1) OF THE PLANNING ACT

A. LAND DIMENSIONS ARE AS SHOWN ON DRAFT PLAN
 B. BOUNDARIES ARE AS SHOWN ON DRAFT PLAN AND KEY PLAN
 C. KEY PLAN IS AS SHOWN ON DRAFT PLAN
 D. PROPOSED LOTS ARE FOR SEASONAL RESIDENTIAL USE, AS SHOWN
 E. ADJACENT OPEN SPACE
 F. LOT DIMENSIONS ARE APPROXIMATE ONLY
 G. TOPOGRAPHICAL PLANS ARE AS SHOWN, BASED UPON ON-LAND BIRGE MAPPING
 H. WATER SUPPLY IS TO BE PROVIDED FROM LAKE
 I. SOILS ARE NATIVE SILTY SAND OVER BEDROCK
 J. SEE CERTIFICATE ATTACHED TO THIS DRAFT PLAN
 K. PRIVATE SEPTIC SYSTEMS TO BE AVAILABLE
 L. THERE ARE NO RESTRICTIONS AFFECTING THIS SUBDIVISION LOTS.

Scale: 1 : 2000
 Sheet: 1 of 1
 Date: July 13, 2006
 Rev: None

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