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**To:** Melissa Markham, Director of Planning Services

**From:** April Best-Sararas, Planner

**Date:** September 30, 2021

**Subject:** Consent Application B 20/21 LOB (Warden), Heney Lake Road, Roll No. 040-001-05210

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### Report Highlights

- to sever a parcel of land (being Parts 2 & 3 on Plan 35R-20226), and merge with a corresponding abutting waterfront property on Heney Lake in order to provide additional area and frontage to the benefitting lot, and to reserve a right-of-way over Part 2 on Plan 35R-20226 to access the retained lands
- as the subject consent application does not propose the creation of a new lot, but rather will serve to provide additional lands to an abutting property to the west and to reserve a right-of-way in favour of the retained lands, and no additional development is proposed on the subject or benefitting lands as part of the subject application, staff have no concerns with the application
- as the application is consistent with the 2020 Provincial Policy Statement and generally conform to both the District and Township Official Plans, staff has no concerns with the approval of the application, subject to the recommendations outlined in this report

### Recommendation

**WHEREAS** the Director of Planning Services of the Corporation of the Township of Lake of Bays hereby receives the staff report “Consent Application B 20/21 LOB (Warden), Heney Lake Road, Roll No. 040-001-05210” dated September 30, 2021.

**BE IT RESOLVED THAT** Consent Application B 20/21 LOB (Warden), to sever a parcel of land (being Parts 2 & 3 on Plan 35R-20226), and merge with a corresponding abutting waterfront property on Heney Lake in order to provide additional area and frontage to the benefitting lot, and to reserve a right-of-way over Part 2 on Plan 35R-20226 to access the retained lands be **APPROVED** subject to the Provisional Decision attached to the staff report as Appendix “B”.

## Origin

This application was received from Wayne Simpson of Wayne Simpson & Associates on behalf of Paul Stephen Warden, landowner.

## Application

The purpose of this application is to sever a parcel of land (being Parts 2 & 3 on Plan 35R-20226), and merge with a corresponding abutting waterfront property on Heney Lake in order to provide additional area and frontage to the benefitting lot as outlined below; and to reserve a right-of-way over Part 2 on Plan 35R-20226 to access the retained lands.

	<b>Lot Area &amp; Shoreline Frontage (Approx.)</b>	<b>Resulting Lot Area &amp; Frontage (Approx.)</b>	<b>Property Roll No.</b>	<b>Owners</b>
<b>Retained</b>	17.3 acre 152.4 metres	10.4 acre 152.4 metres	040-001-05210	Paul Warden
<b>Severed</b>	6.9 acres N/A	N/A	040-001-05210	Paul Warden
<b>Benefitting</b>	34.9 acres 305.9 metres	41.82 acres 305.9 metres	040-001-05200	Paul & Cindy Warden

## Analysis

<b>Property Information</b>		
	<b>Subject Lands (040-001-05210)</b>	<b>Benefitting Lands (040-001-05200)</b>
Official Plan Designation	Waterfront	Waterfront
Development Permit By-law 2004-180 & Comprehensive Zoning By-law 2004-181	Waterfront Residential with an Exception "(WR-E104)" in part and Rural "(RU)" in part	Waterfront Residential with an Exception "(WR-E103)" in part, Waterfront Environmental Protection "(WEP)" in part, Environmental Protection "(EP)", and Rural "(RU)" in part
Waterbody	Heney Lake	Heney Lake

Access	Right-of-way off of Heney Lake Road	Right-of-way off of Heney Lake Road
Lot Area	7.0 hectares (17.3 acres)	14.1 ha (34.9 acres)
Water Frontage	305.9 metres (1,003.6 ft.)	152.4 metres (500 ft.)
Existing Buildings and Structures	Vacant	Developed with a dwelling and accessory structures
Natural Constraints: <i>Values obtained from Official Plan Schedules &amp; District of Muskoka Web Map</i>	<ul style="list-style-type: none"> <li>• Heney Lake is classified as a Category 3 lake (7-69 ha.)</li> <li>• Narrow waterbody</li> <li>• Wetland along eastern boundary</li> <li>• “Type 2” Fish Habitat as identified in previous fish habitat assessment in 2003</li> <li>• Areas of steep slopes 20-40%</li> <li>• Deer Wintering Habitat (Stratum 2)</li> </ul>	<ul style="list-style-type: none"> <li>• Heney Lake is classified as a Category 3 lake (7-69 ha.)</li> <li>• Narrow waterbody</li> <li>• “Type 2” Fish Habitat as identified in previous fish habitat assessment in 2003</li> <li>• Areas of steep slopes 20-40%</li> <li>• Deer Wintering Habitat (Stratum 2)</li> </ul>
Previous/Current Files	<ul style="list-style-type: none"> <li>• B 08-09/98 LOB – to create two new lots on Heney Lake including the subject property, and to grant right-of-way over subject lands in favour of adjacent lands to the west registered as Instrument 328527</li> <li>• Z 10/99 LOB – as a condition of consent to rezone the lands to require specific lot area, easterly interior side yard setback, and rear yard setback</li> <li>• B 28/00 LOB – right-of-way granted over adjacent parcel to the east in favour of subject and benefitting lands of the current application, registered as Instrument 317732</li> <li>• B 15/03 LOB – to sever the subject lands from the current benefitting lands, along with</li> </ul>	<ul style="list-style-type: none"> <li>• B 08-09/98 LOB – to create two new lots on Heney Lake including the subject property, and to grant right-of-way over subject lands in favour of adjacent lands to the west registered as Instrument 328527</li> <li>• Z 10/99 LOB – as a condition of consent to rezone the lands to require specific lot area, easterly interior side yard setback, and rear yard setback</li> <li>• B 28/00 LOB – right-of-way granted over adjacent parcel to the east in favour of subject and benefitting lands of the current application, registered as Instrument 317732</li> <li>• B 15/03 LOB – to sever a lot, together with a right-of-way</li> </ul>

	<p>granting of a right-of-way over the subject lands in favour of the benefitting lands</p> <ul style="list-style-type: none"> <li>• C 10/03 LOB – entered into June, 2004 as a condition of B 15/03 LOB to implement the recommendations of a fisheries habitat assessment, and require a site plan agreement prior to development</li> <li>• Z 29/03 LOB – to rezone the lands to require specific lot area, easterly interior side yard setbacks, and shoreline structure location</li> </ul>	<p>over the then severed lot in favour of this lot</p> <ul style="list-style-type: none"> <li>• C 10/03 LOB – entered into June, 2004 as a condition of B 15/03 LOB to implement the recommendations of a fisheries habitat assessment, and require a site plan agreement prior to development</li> <li>• Z 29/03 LOB – to rezone the lands to require specific lot area, water setback, interior side yard setbacks, and shoreline structure location</li> <li>• D 17/04 LOB – Site Plan Agreement entered into February, 2005 to fulfill condition of consent B 15/03 LOB and Section 51(26) Agreement C 10/03 LOB to site development and retain vegetation</li> <li>• DP 48/15 LOB – to construct sitting platform in the shoreline area, as well as site two future dock locations</li> </ul>
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## Background

- the subject and benefitting lands were subject to previous consent applications in 1998 and 2003, which created the subject lands, together with a right-of-way for access to the subject and benefitting lands
- at the time of the previous consents, Heney Lake was classified as a lake at capacity, whereby the District of Muskoka’s water quality model outlined lot capacity for the lake. In addition, as the shoreline of the properties contained unknown fish habitat (which at the time was treated as “Type 1” Fish Habitat according to the MNRF), a fisheries habitat assessment was required for the proposed lot creation
- the fisheries habitat assessment identified the shoreline as Type 2 Fish Habitat; however, it identified three sections of the shoreline as being potentially more significant than the remainder, being at the easterly and westerly boundaries. Although not confirmed as Type 1 Fish Habitat, it was recommended that additional protection of these areas be implemented to ensure no negative impacts to the fishery, along with mitigative measures including the use of a floating or pipe dock, suitable dock location in the recommended locations, maintenance of a 30 metre vegetated buffer along the shoreline, shoreline dock/access trails not to exceed 2 metres in width, and limitations of shoreline vegetation removal along sensitive

portions of the shoreline

- as a condition of approval of the applications, the subject lands were rezoned to restrict the lot area to a minimum of 6.8 hectares, as well as require a minimum 60 metre easterly interior side yard setback, including for shoreline structures projecting over water. In addition, the benefitting lands were rezoned to restrict the minimum lot area to 6.9 hectares, minimum water setback of 20 metres, minimum easterly interior side yard setback of 10.1 metres, minimum westerly interior side yard setback of 128 metres, and the same interior side yard setbacks to apply to shoreline structures projecting over water
- the primary reason for the site-specific zoning on the lots was to restrict marine facility location in order to implement the findings of the fisheries habitat assessment

### **Appropriateness of the Application**

- this application does not propose the creation of a new lot, but rather will serve to provide additional lot area to a benefitting lot, and no development on the subject or benefitting lands is proposed as part of the subject application
- the proposed severed lands contain Part 2 on Plan 35R-20226, which is utilized to access the existing development on the benefitting lands. As Part 2 on Plan 35R-20226 is proposed to be added to the benefitting lands, the subject application also proposes to reserve a right-of-way over Part 2 on Plan 35R-20226 to continue to access the retained lands
- Section J.48 states that the size, shape, dimension and orientation of any lot will be appropriate to the use proposed, character of the area, configuration and orientation of abutting parcels or buildings and structures, environmental and terrain considerations and the water and sewage services and access proposed
- Section H.26 states that in order of preference, development of shoreline lots may be permitted with the following access: a) seasonally maintained, public road; b) a private road, with a legal right of way
- there is an existing legal right-of-way over the adjacent lands to the east in favour of the subject and benefitting lands, which was established by way of file B 28/00 LOB, registered as Instrument 317732. The benefitting lands are also subject to an existing legal right-of-way to Lots 18 & 19 to the west by way of file B 09/98 LOB, registered as Instrument 328527. No changes to these rights-of-way are proposed as part of this application
- the configuration of the lot addition is appropriate for the lands, and no new development is proposed at this time. Any future development will be subject to the Waterfront Residential "(WR)" requirements of the Development Permit By-law and Official Plan policies pertaining to waterfront residential properties, namely design policies in Sections D.10 and H.18, as well as the site-specific setbacks implemented through the previous Zoning By-law Amendment applications

- as there is an existing Site Plan Agreement (D 17/04 LOB) registered on title for the benefitting lands, a condition of consent has been included which requires the Site Plan Agreement for the benefitting lands to be amended to include the severed lands, or that a Development Permit amendment application be submitted
- furthermore, as there is an existing Section 51(26) Agreement (C 10/03) registered on title for the subject and benefitting lands, a condition of consent has been included which requires the agreement to be amended to ensure the legal description of the lands is updated
- as outlined previously, the site-specific zoning of the subject lands requires a minimum lot area of 6.8 hectares, as well as a minimum 60 metre easterly interior side yard setback, including for shoreline structures projecting over water to primarily to address findings of the fisheries habitat assessment. The proposed lot addition would reduce the lot area of the retained lands to 4.2 hectares, being greater than the typical minimum requirement of 0.4 hectares (1 acre) for a Waterfront Residential property on Heney Lake
- as the subject and benefitting lands have a site-specific zoning, a condition of consent has been included which requires that the zoning of the severed and benefitting lands be amended to include the severed lands in the same zoning as the benefitting lands, and to address the increased lot area accordingly; and that the zoning of the retained lands be amended to reflect the reduction in lot area with the proposed severance/lot addition. All other site-specific provisions would continue to apply to both properties

### Conclusion

- as the subject consent application does not propose the creation of a new lot, but rather will serve to provide additional lands to an abutting property to the west and to reserve a right-of-way in favour of the retained lands, and no additional development is proposed on the subject or benefitting lands as part of the subject application, staff have no concerns with the application
- as the application is consistent with the 2020 Provincial Policy Statement and generally conform to both the District and Township Official Plans, staff has no concerns with the approval of the application, subject to the recommendations outlined in this report

### Public/Agency Comments:

Clerk's Department

- No concerns. There does not appear to be an OSRA associated with the property.

Building Department

- No concerns.

Public Works Department

- No concerns as of the date of this report.

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| Fire Department              | • No concerns as of the date of this report. |
| District of Muskoka Planning | • No concerns.                               |
| Hydro One                    | • No comments or concerns.                   |

## Alternatives

Upon review of the proposal, the Director of Planning Services of the Corporation of the Township of Lake of Bays may choose one of the following options:

- Deny the application;
- Defer the application; or
- Approve the application (refer to recommendation).

## Linkage to the Community-Based Strategic Plan

- Engage and communicate openly with the community;
- Develop long-term land and community plans that are balanced and adaptive;
- Protect, preserve and promote our healthy natural environment.

## Date of Report: September 30, 2021

## Approvals

Prepared by:

**April Best-Sararas**, MCIP, RPP  
Planner

## Attachments

- Appendix “A” – Location Map
- Appendix “B” – Provisional Decision for B 20/21 LOB

## References

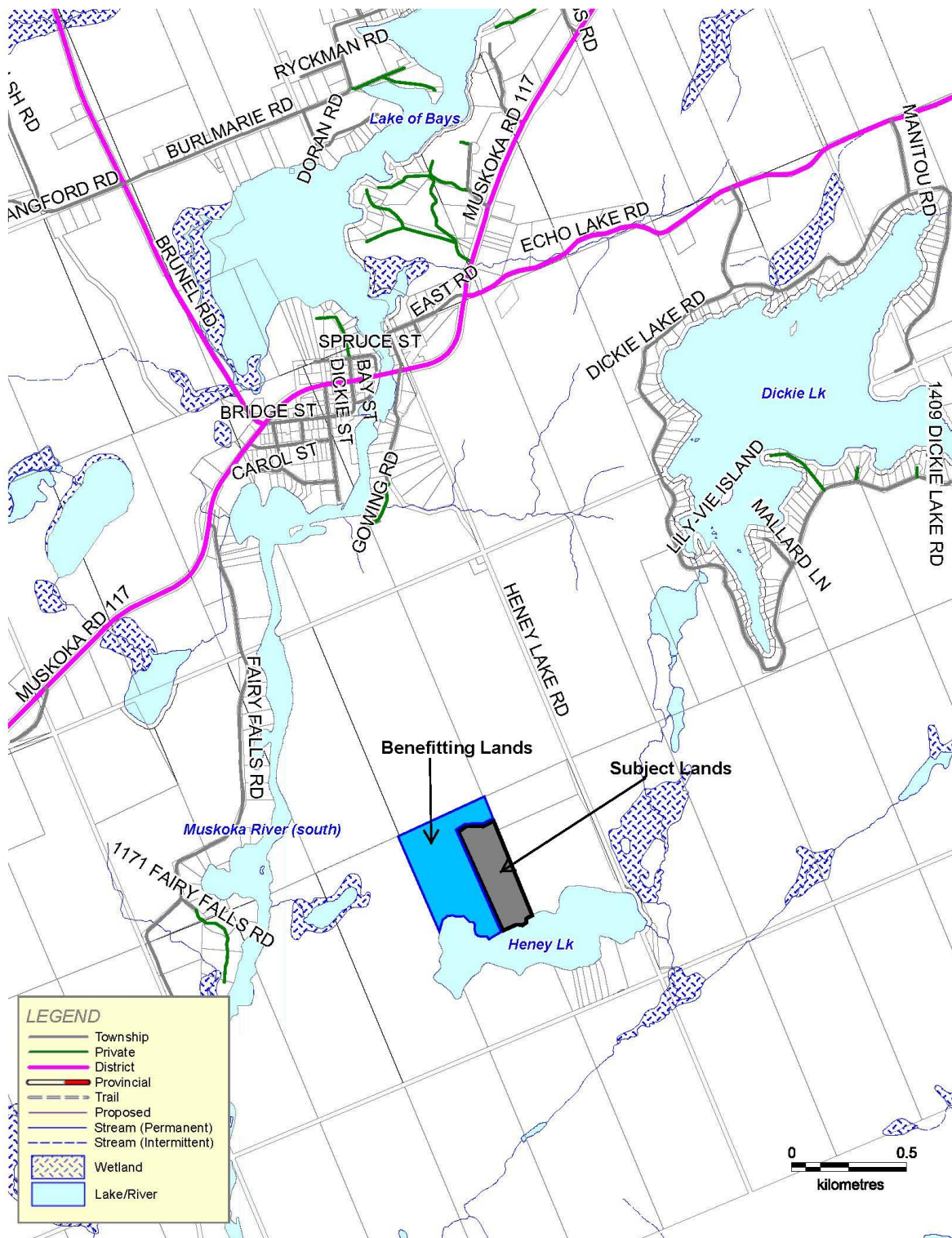
- 2020 Provincial Policy Statement
- Township of Lake of Bays Official Plan, as adopted on January 12, 2016 by By-laws 2016-005 & 2016-049
- By-law 04-180, being the Development Permit Zoning By-law
- Muskoka Web Map
- Archived documents in Laserfiche
- “Fisheries Habitat Assessment” by FRi Ecological Services, dated September

2003

- Staff report by Derrick Hammond re: Rezoning Application Z 29/03 LOB, dated February 13, 2004
- Staff reports by Derrick Hammond re: Consent Application B 15/03 LOB, dated June 23, 2003 and September 23, 2003



## Appendix "A" Location Map



## Appendix “B”

### **PROVISIONAL DECISION**

[The Planning Act, R.S.O. 1990, Chapter 13, Section 45(8)]

Files: **B 20/21 LOB**

Applicant(s): **Paul Stephen Warden**

Application for Consent for: **Lot Addition, and to reserve right-of-way**

Location: **Part of Lot 17, Concession 5, McLean**

Parent Roll Nos.: **040-001-05210**

Date of Decision: **September 30, 2021**

Upon application for consent for the lands described in the above noted file, the decision of the Director of Planning Services of the Corporation of the Township of Lake of Bays is as follows:

**THAT Consent will be GRANTED provided:**

- (1) A draft reference plan of survey is to be submitted to the Director of Planning Services for approval prior to registration. The reference plan must identify the dimensions and lot area of the severed and retained lands as well as the reserved right-of-way in favour of the retained lands as shown in Schedule “A”, together with any applicable easements, the location of any buildings, structures, driveways and roadways located thereon, as well as any wetland/watercourse locations. An electronic version (i.e. “pdf” format) is also to be provided.
- (2) Following the above condition, submit two copies of a deposited reference plan of survey that confirms the dimensions and lot area of the proposed lot addition as well as the reserved right-of-way in favour of the retained lands, to which this consent approval has been granted. An electronic version (i.e. “pdf” format) is also to be provided.
- (3) That any zoning non-compliances, identified through Condition 1 above, resulting from the proposed severance, be brought into compliance.
- (4) That a “Transfer in Preparation” and a “Long Form Certificate” for the severed lands and right-of-way in favour of the retained lands be provided to the Director of Planning Services.
- (5) That the existing Site Plan Agreement (D 17/04 LOB) for the benefitting lands be amended, or that a Development Permit amendment application be submitted, to include the severed lands.
- (6) That the existing Section 51(26) Agreement (C 10/03) for the subject and benefitting lands be amended to amend the legal description of the lands.

- (7) That the zoning of the severed and benefitting lands be amended to include the severed lands in the same zoning as the benefitting lands, and to address the increased lot area accordingly.
- (8) That the zoning of the retained lands be amended to reflect the reduced lot area with the proposed severance/lot addition.
- (9) That there be a written undertaking from the acting solicitor that the severed lot be joined in title to the abutting benefitting lands, owned by Paul & Cindy Warden, under Roll No. 040-001-05200. Subsection 50(3) of the Planning Act applies to any subsequent conveyance of a transaction involving the parcel of land that is the subject of this consent. As electronic registration is being used, this approval will involve a two-step process as follows:
  - (a) Creation of the new parcel for lot addition purposes whereupon it will obtain a new Property Identifier Number (PIN) from the Registry Office; and
  - (b) An Application to Consolidate the newly created lot with the benefitting lands. A copy of the draft Application to Consolidate and an undertaking by the acting solicitor to electronically register the application is to be provided. Once the consolidation has been registered, a copy is to be provided to the Director of Planning Services.
- (10) That any outstanding balances related to the subject application be paid to the Township of Lake of Bays in accordance with the Cost Acknowledgement Agreement.

**REASONS:**

1. The Director of Planning Services is satisfied that the consent application generally conforms to the intent of the Township Official Plan and will sever a parcel of land (being Parts 2 & 3 on Plan 35R-20226), and merge with a corresponding abutting waterfront property on Heney Lake, owned by Paul & Cindy Warden located at 1180 Heney Lake Road (roll no. 040-001-05200) in order to provide additional area and frontage to the benefitting lot, and to reserve a right-of-way over Part 2 on Plan 35R-20226 to access the retained lands.

**SCHEDULE "A"**  
**CONSENT APPLICATION B 20/21 LOB (Warden)**  
**Part of Lot 17, Concession 5, McLean**  
**Heney Lake Road, Roll No. 040-001-05210**

