



**City of Kingston
Report to Committee of Adjustment
Report Number COA-22-015**

To: Chair and Members of the Committee of Adjustment
From: Tim Fisher, Planner
Date of Meeting: January 17, 2022
Application for: Consent
File Number: D10-037-2018 and D10-045-2020
Address: 2539 Isle of Man Road
Owner: Kenneth Paul
Applicant: Kenneth Paul

Council Strategic Plan Alignment:

Theme: 2. Increase housing affordability

Goal: See above

Executive Summary:

The applicant proposes to sever two new lots and retain one lot with the existing dwelling (2539 Isle of Man Road). Consent Application File Number D10-037-2018 proposes to sever a 2.2-hectare parcel of land with 90 metres of road frontage on Isle of Man Road. Consent Application File Number D10-045-2020 proposes to sever a 2-hectare parcel of land with 90 metres of road frontage on Isle of Man Road. The retained parcel will be a 3 hectare parcel of land with approximately 259 metres of road frontage on Isle of Man Road and will maintain the existing single detached dwelling on private services.

The site is situated on the south side of Isle of Man Road and is developed with a single detached dwelling and implement shed. The property is currently designated as Rural and Environmental Protection Area in the Official Plan and is zoned Restricted Rural 'A1' Zone in Zoning By-Law Number 32-74. The subject property is adjacent to a single detached dwelling, and Duffy Lane Condominium to the north, Gilbralter Bay to the east and south and a single detached dwelling to the west.

January 17, 2022

Page 2 of 15

The consent applications proceeded through the Delegated Authority process. The City received public comments during the public notification period therefore the files have been referred to the Committee of Adjustment for consideration. A new public notice was mailed to all property owners within a 60-metre radius of the property and new signage was posted on the site.

This report provides a recommendation to the Committee of Adjustment regarding the application for consent. The proposal has regard to the matters under subsection 51(24) of the *Planning Act*, is consistent with the Provincial Policy Statement, conforms with all applicable policies of the Official Plan, is in keeping with the general intent and purpose of the zoning by-law and a plan of subdivision is not necessary for the proper and orderly development of the property, as such, is recommended for provisional approval.

Recommendation:

That consent application, File Number D10-037-2018, to sever a 2.2-hectare parcel of land with 90 metres of road frontage on Isle of Man Road, be provisionally approved subject to the conditions included in Exhibit A (Recommended Conditions) to Report Number COA-22-015; and

That consent application, File Number D10-045-2020, to sever a 2-hectare parcel of land with 90 metres of road frontage on Isle of Man Road, be provisionally approved subject to the conditions included in Exhibit B (Recommended Conditions) to Report Number COA-22-015.

January 17, 2022

Page 3 of 15

Authorizing Signatures:

ORIGINAL SIGNED BY PLANNER

Tim Fisher, Planner

Consultation with the following Management of the Community Services Group:

Tim Park, Director, Planning Services

James Bar, Manager, Development Approvals

January 17, 2022

Page 4 of 15

Options/Discussion:

Consent application File Number D10-037-2018 was submitted on September 10, 2018 and consent application File Number D10-045-2020 was submitted on October 19, 2020 by the owner Kenneth Paul. The applications were not deemed complete. The application was deemed complete on June 15, 2021 and it proceeded through the Delegated Authority process. The City received public comments during the public notification period; therefore the files have been referred to the Committee of Adjustment for consideration. A new public notice was mailed to all property owners within a 60 metre radius of the property and new signage was posted on the site.

Site Characteristics

The site is situated on the south side of Isle of Man Road (Exhibit C) and is developed with a single detached dwelling and implement shed. The property is currently designated as Rural Lands and Environmental Protection Area in the Official Plan and is zoned Restricted Rural 'A1' Zone in Zoning By-Law Number 32-74. The subject property is adjacent to a single detached dwelling, and Duffy Lane Condominium to the north, Gilbralter Bay to the east and south and a single detached dwelling to the west.

Application

The Director of Planning Services, through delegated authority, can process applications for consent that are technical in nature without holding a Public Meeting. All residents within a 60-metre radius of the property were notified through this process, however, a letter of objection and concerns were received. As such, this consent application is being referred to the Committee of Adjustment for consideration. Revised signage has been posted on the site and public notification of the Public Meeting has been sent to all property owners within a 60 metre radius. A courtesy advertisement has been published in the local newspaper.

In support of the application, the applicant has submitted the following:

- Revised Severance Sketch (Exhibit H);
- Environmental Impact Study; and
- Stage 1 and 2 Archaeological Assessment.

All submission materials are available online through the Development and Services Hub (DASH) at the following link, [DASH](#), using "Look-up a Specific Address". If there are multiple addresses, search one address at a time, or submission materials may also be found by searching the file number.

Planning Act

The proposed severance meets the tests set out in the *Planning Act*. The proposed severance is for two additional lots within the rural area which are to be developed on private on-site

January 17, 2022

Page 5 of 15

services. In this instance, a plan of subdivision is not required for the proper and orderly development of the property as per subsection 53(1) of the *Planning Act*.

In general, the proposed consent has proper regard for the criteria in Section 51(24) of the *Planning Act*. The proposed consent:

- is consistent with the policies of the Provincial Policy Statement and City of Kingston Official Plan;
- will not negatively impact natural or cultural heritage resources;
- each lot is to be developed with private on-site services and will not result in the expansion of city services;
- proposes a hydro-geological assessment for the severed lots;
- proposes cash-in-lieu of parkland;
- proposes severed and retained lots which are consistent in shape and size to surrounding lots, and has frontage onto a municipal road; and
- generally contributes to the efficient use of land.

Provincial Policy Statement

The Provincial Policy Statement provides policy direction on matters of provincial interest related to land use planning and development which are complemented by local policies addressing local interests. The application being considered is site specific to accommodate a specific proposal and does not involve any major policy considerations and as much, the proposal conforms to and is consistent with the PPS.

Official Plan

The subject property is designated Rural Lands in the Official Plan (Exhibit F). Permitted uses in the Rural Lands designation include all agricultural uses and agriculture-related uses as permitted in the Prime Agricultural Area designation, sports and outdoor recreation activities in accordance with Section 3.12.4, and detached dwellings in accordance with Section 3.12.10 and that are compatible with adjacent land uses. The proposed residential use for each lot is permitted in the 'Rural Lands' designation and is in keeping with the existing development along Isle of Man Road.

The City recognizes the role of Rural Lands in contributing to agricultural production, forestry and mineral resources, natural areas and wildlife habitat, providing opportunities for rural economic development, outdoor recreation, and supporting the appreciation of natural areas that provide a contrast and respite from urban life. Lots in excess of 2 hectares are permitted to have an agricultural use as per the 'A1' zone in Zoning By-Law Number 32-74 which may accommodate a small hobby farm on the severed and retained lands. The residential and agricultural use maintain the character of the rural area and in keeping with the established residential and agricultural uses along Isle of Man Road.

January 17, 2022

Page 6 of 15

The southern portion of the lot along the waters edge is designated Environmental Protection Area (EPA) in the Official Plan. The Environmental Protection Areas is a 30 metres buffer which is intended to be maintained in their natural, undisturbed state to provide a buffer of undisturbed soil and vegetation along the shoreline, which will help filter runoff, prevent soil erosion, and provide wildlife habitat.

The subject property has also been identified to have significant woodland, contributory woodland and an unevaluated wetland as per Schedule 8 – Natural Heritage Area C in the Official Plan and is subject to Section 3.12.13 and Section 6 of the Official Plan.

Development and site alteration are not permitted on adjacent lands to Natural Heritage “A” or “B” features shown on Schedules 7 and 8 respectively, unless it has been demonstrated that there will be no negative impacts on the natural heritage features and areas or on their ecological functions.

The applicant submitted an Environmental Impact Study (EIS) prepared by Pichin dated October 29, 2021. Section 8.0 of the EIS recommends the following requirements for any development on the severed and retained lots, including driveways and infrastructure.

Surface water and floodplain protection:

- Prior to entrances construction, adequate erosion and sediment control (ESC) measures including a silt fencing or silt socks (i.e. biologs) should be established around the construction areas upgradient from the woodland, wetland and waterbody features until the disturbed area is restored upon construction completion.
- Sufficient buffers to the adjacent natural features through protection zones will be established (i.e. a minimum of 5 metres to woodlands and 30 metres to wetlands and waterbody. No disturbances to the floodplains will occur for the Site severance and entrance construction.
- Disturbed areas should be stabilized immediately post construction to prevent any possible site erosion and/or sedimentation.

Wildlife and Species at Risk encounter protocol:

- If wildlife are encountered during entrances construction, work should cease immediately and allow the animal to naturally move out of the construction zone. If the animal does not leave the area for a prolonged period of time, please consult with a qualified Biologist for possible response or mitigation measures.
- If an animal is injured or deceased or if a Species at Risk is found on the Site, the Ministry of Natural Resources and Forestry (Kingston District) or Ministry of Environment, Conservation and Parks will be contacted for guidance and handling.

January 17, 2022

Page 7 of 15

Staff of Cataraqui Region Conservation Authority (CRCA) and Parks Canada as part of the Rideau Waterway Development Review Team (RWDRT), reviewed the submitted EIS and is satisfied with the methodology, findings and recommendations provided in the final report. The report found that there would be no negative impacts to significant woodlands, significant wildlife habitat, wetlands, species-at-risk, fish habitat and other natural heritage features as a result of the severances provided that development and site alteration be limited to a minimum of 30 metres setback from the wetland and a minimum of 5 metre setback from the dripline of the wooded area on the subject lands. Further, they also recommend that the environmental protection and mitigation measures listed in Section 8.0 from the EIS be implemented through a development agreement registered on title for the new lots (lots to be severed) as a condition of consent.

RWDRT staff also recommend that development (including all buildings and structures) be prohibited along the shoreline and in the water along the severed lots and retained lot. The shallow, ecologically sensitive nature of Gibraltar Bay in this location is not appropriate for alterations to the waterfront. The shoreline should remain in an undisturbed state. They recommend that buildings, structures and alterations to the waterfront and shoreline be prohibited through the zoning by-law amendment provisions.

RWDRT staff therefore have no objection to the approval of consent applications File Number D10-045-2020 and File Number D10-0327-2018 based on their consideration for natural heritage, natural hazards, Rideau Canal heritage values, and water quality protection policies provided the following are applied:

- That the subject lands (severed and retained lots) be subject to a zoning by-law amendment to prohibit development within the wooded area, wetland and the recommended setbacks;
- That the environmental protection and mitigation measures recommended in Section 8.0 of the Environmental Impact Study (Pinchin, October 29, 2021) be implemented through a development agreement registered on title for the lots to be severed; and
- That development (including all buildings and structures) be prohibited along the shoreline and in the water along Gibraltar Bay.

The recommendations provided in Section 8.0 of the EIS and by the RWDRT team are recommended as conditions of consent (Exhibit A and Exhibit B).

Severances for non-farm residential use may be permitted subject to the policies of Sections 9.6.10 through 9.6.18 and the policies in Section 3.12.9. The proposed retained and severed parcels of land comply with the severance for non-farm residential use as per Section 3.12.9 in the Official Plan. The subject lot has not received any consents to create new lots between March 17, 1982 to present and will exceed the minimum lot area requirement of 1.0 hectares and comply with the requirements of the 'A1' zone in Zoning By-Law Number 32-74.

The creation of new lots is subject to the Land Division policies of Section 9.6 of the Official Plan. Development proposals resulting in greater than 3 lots must proceed by way of a plan of

January 17, 2022

Page 8 of 15

subdivision. Proposals resulting in 3 or fewer lots (2 lots plus a retained parcel) may proceed by application for consent. The applicant proposes to sever 2 lots and retain 1 lot which complies with the Consent process.

The creation of new lots by consent must have regard to the matters under Section 51(24) of the *Planning Act* and must meet the following requirements as per Section 9.6.11 of the Official Plan:

- a) minimum lot areas for consents are established within the policies of the Prime Agricultural Area, Rural Lands, Hamlets, Rural Commercial and Rural Industrial designations;

The Rural Lands designation requires any new non-farm residential use lot created by way of consent to have a minimum lot area of 1.0 hectares. The severed and retained lots will meet the minimum requirement and will comply with the minimum lot area and frontage requirements in the 'A1' zone in Zoning By-Law Number 32-74.

- b) the minimum lot areas for consents on lands located within the Urban Boundary are governed by the provisions of the applicable zone;

The subject property is located outside of the Urban Boundary and is subject to the Rural Lands and Environmental Protection Area designation policies of the Official Plan.

- c) conformity to Section 3.13 of this Plan;

The subject property is outside of a recognized Hamlet or settlement area.

- d) the specific consent policies for the land use designations established by this Plan make allowance for consents involving lot consolidation; and

The Rural Lands designation recognizes the creation of non-farm residential use lots subject to Section 3.12.9 and Sections 9.6.10 through 9.6.18 of the Official Plan. The severed and retained lots comply with the above policies. The applicant is not proposing any lot consolidations or lot additions.

- e) Where an application for lot consolidation in Rural Areas is approved, conditions may be imposed requiring that the lots to be consolidated be deeded in the same name.

The applicant is not proposing any lot consolidations or lot additions.

The creation of individual parcels of land by way of consent are subject to the following criteria in Section 9.6.13 of the Official Plan:

- a) the lot frontage, depth and area of any lot created by consent (severed and retained parcel) must be appropriate for the use proposed for the lot, be in compliance with the provisions of the zoning by-law and consistent, where possible, with adjacent lots;

January 17, 2022

Page 9 of 15

The severed and retained parcel conforms to the minimum lot area and frontage requirements in the Official Plan and Zoning By-Law. The undeveloped severed parcels of land will be subject to the setback requirements of the Zoning By-Law at time of development. The resulting lots and its frontages and lot areas will be consistent with existing lots along Isle of Man Road.

- b) proposed severances that would result in irregularly shaped lots are to be avoided where possible;

The severed and retained lots are shaped in a way to prevent any environmental impact to the wetlands near the southern part of the property.

- c) consents may be granted only when each parcel of land has frontage and direct access from an assumed road, except for conservation lands such as those held by the Conservation Authority or a land trust that can be accessed through an easement or right-of-way on abutting lands;

Each resulting lot will have frontage on Isle of Man Road which is an opened and maintained road.

- d) direct access from major roads is limited and is subject to the terms of any permits or approvals required from an agency having jurisdiction, with particular attention to controlled areas subject to Ministry of Transportation review and approval;

Any new or altered entrances on the severed or retained lots will require an Entrance Permit from the Engineering Department prior to any excavation or work within the road allowance.

- e) new access points or driveways must be located where they would not create a traffic hazard because of sight lines on curves, grades or corners;

The severed and retained lots have road frontages on a curve and incline along Isle of Man Road. The road frontages appear to have adequate grades that create for good sight lines. Engineering Services have no concerns therefore the severances should not result in any negative traffic hazards. An entrance permit is required for any new or altered entrances.

Isle of Man Road is deficient in width, the applicant will be required to survey and convey a road widening to ensure that the City owns a minimum of 10 metres from the centerline of the existing paved road. This is recommended as a condition of consent.

- f) minor infilling of residential development is permitted except where the new lots would result in ribbon development of more than four houses or other land uses fronting along roads in Rural Areas;

The severed and retained lots will not create ribbon development along Isle of Man Road.

January 17, 2022

Page 10 of 15

- g) infill residential development is permitted within Rural Areas where there is a distance of 100 metres or less of frontage between two non-farm residential lots on the same side of the road and the lot can meet all of the other policies of this Plan and requirements of the zoning by-law;

The severed and retained lots would not be considered infill residential development. However, the lots will meet the minimum lot frontage and lot area requirements of the zone and maintain the intensification policies of the Official Plan.

- h) compatibility and any separation distances required between the proposed land uses for the lot and the neighbouring land uses located in Rural Areas must be considered;

The subject property is located in the rural area which consists of both residential and agricultural uses. An agricultural use is located to the north. A storage barn is located on 2538 Isle of Man Road which is approximately 19 metres from the subject property. The severed and retained lots will not result in any impacts abutting agricultural uses, existing livestock or manure storage facilities.

- i) any application for a consent must assess the impact on the natural heritage system, natural heritage features and areas, natural hazards, cultural heritage resources and areas of archaeological potential, or areas of archaeological significance as set out in Sections 5, 6 and 7 of this Plan; and

The property is adjacent to a portion of the Rideau Canal World Heritage Site. The addition of two new single detached dwellings on large estate lots will have no impact on the cultural heritage value of this heritage resource. The maintenance and re-naturalization of the shoreline is encouraged, in order to conserve the universal heritage value of this resource.

The applicant submitted a Stage 1 and 2 Archaeological Assessment prepared by Abacus Archaeological Services, dated December 19, 2018 which cleared the site of Archaeology. A letter from the Ministry Heritage, Sport, Tourism and Culture Industries confirming their review/clearance Archaeological Report has been received. There are no other heritage concerns.

Staff of Cataraqui Region Conservation Authority (CRCA) and Parks Canada as part of the Rideau Waterway Development Review Team (RWDRT), reviewed the submitted EIS and is satisfied with the methodology, findings and recommendations provided in the final report. RWDRT have no objections to the approval of applications File Number D10-037-2018 and File Number D10-045-2020 based on their consideration for natural heritage, natural hazards and water quality protection policies subject to the implementation of the recommendations stated in Section 8.0 of the EIS and a zoning by-law amendment to prohibit development within the wooded area, wetland and the recommended setbacks. This has been recommended as conditions of consent (Exhibit A and Exhibit B).

January 17, 2022

Page 11 of 15

The Trans-Northern Pipeline and its easement is located along the southern portion of the subject property. Trans-Northern Pipeline Inc (TNPI) stated that they prefer that a lot severance will not result in the easement being further fragmented. The owner(s) shall be aware that Trans-Northern is regulated by the Canada Energy Regulator, Section 335(1) and (2) of the Canadian Energy Regulator Act. Specific requirements and clauses pertaining to the act shall be placed on title.

A development agreement is recommended to be registered on title of the severed and retained parcels which will include recommendations and clauses raised by technical agencies and recommended within the EIS.

Additionally, should the applicant propose to cross the pipeline with a vehicle or construct a facility across, on, along or under the pipeline, the applicant would be required to contact TNPI prior to commencement of their work to receive the required authorization.

- j) the City must be satisfied that any development lots created by consent can be supplied with such municipal services as fire protection, road maintenance, storm drainage and where applicable, water supply and sewage disposal facilities, such that the provision of services does not adversely affect the City's finances.

The subject lot is located outside of the Urban Boundary and its serviced area therefore development outside of the urban boundary may proceed with private onsite services.

A full hydrogeological assessment will be required as a condition of consent as the severed lots is located in a density of greater than five lots per five hectares and is located in an area of groundwater constraint.

The proposal meets the intent of the Official Plan, as the proposed two lot severances will not result in any negative impacts to adjacent properties or to the neighbourhood.

Zoning By-Law

The subject property is zoned Restricted Rural 'A1' Zone in the City of Kingston Zoning By-Law Number 32-74, entitled "Township of Pittsburgh Zoning By-Law", as amended (Exhibit G). The A1 zone permits a single detached dwelling and agricultural uses on lots greater than 2 hectares. The severed and retained lots comply with the minimum frontage and lot area requirements. The existing development on the retained lot complies with performance standards. Any new development or redevelopment on the severed or retained lots are required to comply with the performance standards of the applicable Zoning By-Law.

Staff of Cataraqui Region Conservation Authority (CRCA) and Parks Canada as part of the Rideau Waterway Development Review Team (RWDRT), requested that approval of the consent applications be subject to a zoning by-law amendment to prohibit development within the wooded area, wetland and the recommended setbacks. This has been recommended as conditions of consent (Exhibit A and Exhibit B).

January 17, 2022

Page 12 of 15

Discussion

It is the opinion of the Planning Department that the consent applications to sever two new lots in a rural area are consistent with the Provincial Policy Statement and is in keeping with the intent and purpose of the Official Plan and Zoning By-Law Number 32-74.

Technical Review: Circulated Departments and Agencies

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> Building Division | <input checked="" type="checkbox"/> Engineering Department | <input checked="" type="checkbox"/> Heritage (Planning Services) |
| <input checked="" type="checkbox"/> Finance | <input checked="" type="checkbox"/> Utilities Kingston | <input checked="" type="checkbox"/> Real Estate & Environmental Initiatives |
| <input checked="" type="checkbox"/> Fire & Rescue | <input type="checkbox"/> Kingston Hydro | <input checked="" type="checkbox"/> City’s Environment Division |
| <input checked="" type="checkbox"/> Solid Waste | <input checked="" type="checkbox"/> Parks Development | <input type="checkbox"/> Canadian National Railways |
| <input checked="" type="checkbox"/> Housing | <input checked="" type="checkbox"/> District Councillor | <input type="checkbox"/> Ministry of Transportation |
| <input type="checkbox"/> KEDCO | <input checked="" type="checkbox"/> Municipal Drainage | <input type="checkbox"/> Parks of the St. Lawrence |
| <input checked="" type="checkbox"/> CRCA | <input type="checkbox"/> KFL&A Health Unit | <input checked="" type="checkbox"/> Trans Northern Pipelines |
| <input checked="" type="checkbox"/> Parks Canada | <input checked="" type="checkbox"/> Eastern Ontario Power | <input type="checkbox"/> CFB Kingston |
| <input type="checkbox"/> Hydro One | <input checked="" type="checkbox"/> Enbridge Pipelines | <input checked="" type="checkbox"/> TransCanada Pipelines |
| <input type="checkbox"/> Kingston Airport | | |

Technical Comments

This application was circulated to external agencies and internal departments for their review and comment and there were no comments or concerns raised that would preclude this application from moving forward. Any technical comments that are received after the publishing of this report will be included as an addendum to the Committee of Adjustment Agenda.

Public Comments

At the time this report was finalized, one public comment was received. Any public comments received after the publishing of this report will be included as an addendum to the Committee of Adjustment Agenda. Comments received to date are attached (Exhibit J).

Concerns:

Flooding of Island of Man Road at the causeway when its lone culvert becomes damned with ice in the spring runoff. During winter months the incline and bend in the road along the subject property results in unsafe conditions and many vehicles and school buses have gone off the road.

Response:

CRCA staff considered if safe ingress/egress is provided to the proposed development through areas subject to natural hazards (flooding and erosion). They are aware of the potential risk posed by the low-lying section of Isle of Man Road that is a causeway over the east end of

January 17, 2022

Page 13 of 15

Gibraltar Bay. They understand that, at times, the road may experience partial flooding if the culvert under the causeway is obstructed during high water levels.

The lowest elevation of the road is approximately 89.2 metres GSC. For the Rideau Canal system, CRCA staff use the maximum recorded water level as the extent of flooding risk associated with a waterbody. CRCA staff know the maximum recorded water level for Colonel By Lake (and Gibraltar Bay) is 89.1 metres GSC. During high westerly winds and in the event of culvert blockage, this flood risk elevation could be slightly higher.

The provincial flood protection standards states that 250 millimetres (25 centimetres) of road overtopping from flooding is considered to be within the margins for safe vehicular access. The road currently falls within this range and is, therefore, considered to provide safe access.

The letter of concern has been forwarded to Public Works as concerns are raised about the maintenance of Isle of Man Road. Public Works are aware of the concerns of residents on Isle of Man Road.

Previous or Concurrent Applications

There are no concurrent or relevant historic planning applications on the subject property.

Conclusion

The proposal has regard to the matters under subsection 51(24) of the *Planning Act*, is consistent with the Provincial Policy Statement, conforms with all applicable policies of the Official Plan, is in keeping with the general intent and purpose of the zoning by-law and a plan of subdivision is not necessary for the proper and orderly development of the property, as such, is recommended for provisional approval.

Provisional approval of this application will create two new rural lots intended for residential development and retain a lot which will maintain the existing single detached dwelling on private on-site services. Each lot will have frontage on Isle of Man Road and will comply with the minimum frontage and minimum lot area requirement of the 'A1' zone in Zoning By-Law Number 32-74.

Existing Policy/By-Law:

The proposed application was reviewed against the policies of the Province of Ontario and City of Kingston to ensure that the changes would be consistent with the Province's and the City's vision of development. The following documents were assessed:

Provincial

Provincial Policy Statement, 2020

January 17, 2022

Page 14 of 15

Municipal

City of Kingston Official Plan

Zoning By-Law Number 32-74

Notice Provisions:

A Committee of Adjustment Meeting is going to be held respecting this application on January 17, 2022. Pursuant to the requirements of the *Planning Act*, a notice of Statutory Public Meeting was provided by advertisement in the form of signs posted on the subject site 14 days in advance of the meeting. In addition, notices were sent by mail to a total number of eight property owners (according to the latest Assessment Roll) within 60 metres of the subject property and a courtesy notice was placed in The Kingston Whig-Standard.

Once a decision has been rendered by the Committee of Adjustment, a Notice of Decision will be circulated in accordance with the provisions of the *Planning Act*.

Accessibility Considerations:

None

Financial Considerations:

None

Contacts:

James Bar, Manager, Development Approvals 613-546-4291 extension 3213

Tim Fisher, Planner, 613-546-4291 extension 3215

Other City of Kingston Staff Consulted:

None

Exhibits Attached:

Exhibit A Recommended Conditions, File Number D10-037-2018

Exhibit B Recommended Conditions, File Number D10-045-2020

Exhibit C Key Map

Exhibit D Public Notification Map

Exhibit E Neighbourhood Context Map (2021)

January 17, 2022

Page 15 of 15

- Exhibit F Official Plan Map
- Exhibit G Zoning By-Law Number 32-74, Map 1
- Exhibit H Revised Severance Sketch
- Exhibit I Site Photos
- Exhibit J Public Comments

Recommended Conditions

The provisional approval of consent application, File Number D10-037-2018, to sever a 2.2 hectare parcel of land with approximately 90 metres of road frontage on Isle of Man Road, is subject to the following recommended conditions:

1. Certificate of Official and Deadline

That all conditions are satisfied, and the Certificate of Official be presented to the Secretary-Treasurer, Committee of Adjustment for certification under Section 53(42) of the Planning Act, R.S.O. 1990 as amended, within one year of mailing of this notice. We suggest that the Land Registry Office be consulted for preapproval of the Certificate of Official to avoid delays.

The Certificate must be registered within two years from the issuance of the certificate as required under Section 53(43) of the Planning Act, R.S.O. 1990, as amended. A copy of the registered transfer certificate shall be provided to the Secretary-Treasurer, Committee of Adjustment to complete the file.

2. Reference Plan

That a digital version of a Reference Plan be provided in a PDF and AutoCAD Windows readable format on a compact disc (CD), USB memory stick or by email, illustrating the severed parcel be prepared and presented to the Secretary-Treasurer, Committee of Adjustment prior to the issuance of the Certificate of Official.

3. Payment of Taxes

The owner/applicant shall contact the Tax Department at tax@cityofkingston.ca and secure in writing from the Treasurer or the Manager of Taxation and Revenue, proof of payment of current taxes and any special charges (not simply a copy of the tax bill) required to be paid out and a statement of proof that is received and shall be provided to the Secretary-Treasurer Committee of Adjustment, prior to the issuance of the consent certificate. The owner/applicant must pay any outstanding realty taxes and all local improvement charges levied against the property.

4. Zoning By-Law Amendment

Prior to the issuance of the Certificate of Official, the owner shall obtain a Zoning By-Law Amendment for the severed and retained lot to include the recommendations and conditions provided by RWDRT staff for the following:

- That development is prohibited within the wooded area, wetland and the recommended setbacks in Section 8.0 of the Environmental Impact Study (Pinchin, October 29, 2021; and
- That development (including all buildings and structures) be prohibited along the shoreline and in the water along Gibraltar Bay.

5. Road Widening

The applicant shall have their surveyor verify if a road widening of 10 metres from the centreline of road is required along the entire frontage of the severed and retained lot along Isle of Man Road. If a widening is required, then it shall be conveyed to the City prior to the issuance of the Certificate of Official. The applicant shall illustrate the widening as a separate part on a reference plan and, after registration of said deed at the expense of the applicant, and prior to issuing the certificate for the severance herein, the solicitor for the applicant shall certify that the title of the municipality to the said strip is free and clear of all encumbrances of every nature and that the municipality has a good and marketable title.

6. Hydro-Geological Assessment

In order to review the hydro-geological conditions in support of the proposed severance, a well shall be constructed, or confirmation shall be provided of an existing well, on the severed parcel, in accordance with current standards described in Ontario Regulation 903 or as amended.

A Full Hydro-geological Assessment shall be completed in accordance with the City of Kingston's "Interim Standard Hydro-geological Assessments in Support of (1-3) Rural Land Severances" to ensure that the new well(s) or existing unused wells satisfy the City's criteria for construction, water quantity, water quality, and interference with surrounding wells. The applicant shall contact the Environment Division to confirm their requirements for approval of this condition.

Two (2) copies of the study and all relative information shall be provided to the Secretary-Treasurer of the Committee of Adjustment to be forwarded to the Environment Division for their review and further to confirm compliance to current City standards. Written acceptance of this study and its conclusions shall be provided by the Environment Division to the Secretary-Treasurer of the Committee of Adjustment prior to the issuance of the consent certificate.

Recommendations made by the Environment Division as a result of this assessment may be required to be included within a Development Agreement which is to be registered against the title to the lands.

7. Trans-Northern Pipeline

The Certificate of Official shall include and continue to recognize the Trans-Northern Pipeline Easement crossing the severed lot.

8. Civic Address

The owner/applicant shall contact the Planning Division once the Reference Plan has been deposited and provided to the City, and obtain a draft civic address for each new lot created and all appropriate fees shall be paid. The

owner/applicant shall provide to the Secretary-Treasurer, Committee of Adjustment, written confirmation from the City that the civic address has been obtained prior to the issuance of the consent certificate.

9. Cash in Lieu of Parkland

That \$1,283.29 shall be paid to the City of Kingston as cash-in-lieu of land dedication for park or public recreational purposes for each new building lot being created. The applicant may choose to pay the fee through their DASH application, provide a certified cheque or provide payment at the front desk at 1211 John Counter Boulevard, prior to the issuance of the consent certificate.

10. Development Agreement

The owner shall enter into a development agreement satisfactory to the City to be registered on title to the severed and retained lands. All legal costs associated with the preparation and registration of the agreement shall be borne by the owner. The applicant shall provide a copy of the registered executed agreement to the Secretary-Treasurer, Committee of Adjustment, prior to the issuance of the consent certificate. The agreement shall contain conditions to ensure:

- a) That any new septic system on the severed or retained parcels shall conform to the provisions of the City's Official Plan and the owner shall obtain a Building Permit for the construction or alteration to a septic system.
- b) Any recommendations resulting from the hydro-geological assessment are included within the development agreement for the lands.
- c) In the event that deeply buried or previously undiscovered archaeological deposits are discovered in the course of development or site alteration, all work must immediately cease and the site must be secured. The Cultural Program Branch of the Ministry of Tourism, Culture and Sport (416-314-7132) and the City of Kingston's Planning Division (613-546-4291, extension 3180) must be immediately contacted.
- d) In the event that human remains are encountered, all work must immediately cease and the site must be secured. The Kingston Police (613-549-4660), the Registrar of Cemeteries Regulation Section of the Ontario Ministry of Consumer Business Services (416-326-8404), the Cultural Program Branch of the Ministry of Tourism, Culture and Sport (416-314-7132), and the City of Kingston's Planning Division (613-546-4291, extension 3180) must be immediately contacted.
- e) That the existing rights of Trans-Northern Pipeline Inc. and its easement shall be maintained in the event that service, upgrade or maintenance is required.

It is prohibited for any person to construct a facility across, on, along or under a pipeline or engage in an activity that causes a ground disturbance within

the prescribed area unless the construction or activity is authorized or required by the orders made under subsection (3) or (4) or regulations made under subsections (5) or (6) and done in accordance with them.

• **Prohibition — vehicles and mobile equipment**

It is prohibited for any person to operate a vehicle or mobile equipment across a pipeline unless

(a) that operation is authorized or required by orders made under subsection (3) or (4) or regulations made under subsections (5) or (6) and done in accordance with them; or

(b) the vehicle or equipment is operated within the travelled portion of a highway or public road.

Should the applicant propose to cross the pipeline with a vehicle or construct a facility across, on, along or under the pipeline, the applicant would be required to contact TNPI prior to commencement of their work to receive the required authorization. This process can be initiated through Ontario One Call (1-800-400-2255).

- f) That the owner acknowledges that a portion of the site is within an Environmental Protection Area (EPA) or Floodplain (FP) and any development shall occur only outside of the defined EPA or FP area and shall be subject to Cataraqui Region Conservation Authority (CRCA) and O.Reg 149/06: Development, Interference within Wetlands and Alterations to shorelines and Watercourses and other Municipal By-Laws and requirements;
- g) That the owner acknowledges that the site has water frontage on Gilbralter Bay off Colonel By Lake, Part of the Rideau Canal which is a National and Historic Site of Canada and UNESCO World Heritage Site.

The Parks Canada Rideau Canal Office is the approval authority for all in-water and shoreline works along the Canal waterway. If the landowner wishes to carry out any new in-water and shoreline works for shoreline access, including but not limited to docks, decks, boathouses, launch ramps, beaches, dredging and shoreline stabilization devices, the Rideau Canal Office must be contacted. Written approval must be obtained prior to the commencement of construction. Work must adhere to the *Policies for In-water and Shoreline Works and Related Activities*.

- h) That the owner be advised that any new or altered entrance to the site will require an entrance permit from the Engineering Division.
- i) That a Building Permit is required prior to the construction or removal of all structures 10 square metres in area or greater. Issues such as but not limited to O.B.C., grading and servicing will be agreed through the permit review process.

- j) That the recommendations from the Scoped Environmental Impact Study prepared by Pinchin dated October 29, 2021 and its proposed conditions be included in the Development Agreement.
- k) That the owner acknowledges and agrees with the City that:
 - a. The severed lands and the retained lands are located outside the limits of the municipal water and sewer service area and are not serviced by the City's water treatment plant or sewage treatment facility;
 - b. The owner shall be solely responsible for ensuring at all times and by all means that there is an adequate supply of potable water and adequate on-site sewage treatment facility maintained by the owner, for the owner's intended use of the severed lands and retained lands;
 - c. Despite the Committee of Adjustment approval to sever the lands, or that the City has approved zoning for either or both of the severed lands and retained lands that would permit construction of a building thereon, or that the City has or may at any time in the future issue a building permit or approve a site plan for either or both the severed lands and retained lands, the City will have no obligation to extend the municipal water area or provide municipal water services, or to extend the municipal sewer service area or provide municipal sewer services to or for the benefit of either the severed lands or retained lands;
 - d. Regardless of any order issued by the Ministry of the Environment or by the City of Kingston, Building Services in the future, the owner shall be solely responsible for the costs associated with any upgrading or extension of any private or municipal services required to be constructed to comply with such order.

Recommended Conditions

The provisional approval of consent application, File Number D10-045-2020, to sever a 2 hectare parcel of land with approximately 90 metres of road frontage on Isle of Man Road, is subject to the following recommended conditions:

1. Certificate of Official and Deadline

That all conditions are satisfied and the Certificate of Official be presented to the Secretary-Treasurer, Committee of Adjustment for certification under Section 53(42) of the Planning Act, R.S.O. 1990 as amended, within one year of mailing of this notice. We suggest that the Land Registry Office be consulted for preapproval of the Certificate of Official to avoid delays.

The Certificate must be registered within two years from the issuance of the certificate as required under Section 53(43) of the Planning Act, R.S.O. 1990, as amended. A copy of the registered transfer certificate shall be provided to the Secretary-Treasurer, Committee of Adjustment to complete the file.

2. Reference Plan

That a digital version of a Reference Plan be provided in a PDF and AutoCAD Windows readable format on a compact disc (CD), USB memory stick or by email, illustrating the severed parcel be prepared and presented to the Secretary-Treasurer, Committee of Adjustment prior to the issuance of the Certificate of Official.

3. Payment of Taxes

The owner/applicant shall contact the Tax Department at tax@cityofkingston.ca and secure in writing from the Treasurer or the Manager of Taxation and Revenue, proof of payment of current taxes and any special charges (not simply a copy of the tax bill) required to be paid out and a statement of proof that is received and shall be provided to the Secretary-Treasurer Committee of Adjustment, prior to the issuance of the consent certificate. The owner/applicant must pay any outstanding realty taxes and all local improvement charges levied against the property.

4. Zoning By-Law Amendment

Prior to the issuance of the Certificate of Official, the owner shall obtain a Zoning By-Law Amendment for the severed and retained lot to include the recommendations and conditions provided by RWDRT staff for the following:

- That development is prohibited within the wooded area, wetland and the recommended setbacks in Section 8.0 of the Environmental Impact Study (Pinchin, October 29, 2021; and
- That development (including all buildings and structures) be prohibited along the shoreline and in the water along Gibraltar Bay.

5. Road Widening

The applicant shall have their surveyor verify if a road widening of 10 metres from the centreline of road is required along the entire frontage of the severed and retained lot along Isle of Man Road. If a widening is required, then it shall be conveyed to the City prior to the issuance of the Certificate of Official. The applicant shall illustrate the widening as a separate part on a reference plan and, after registration of said deed at the expense of the applicant, and prior to issuing the certificate for the severance herein, the solicitor for the applicant shall certify that the title of the municipality to the said strip is free and clear of all encumbrances of every nature and that the municipality has a good and marketable title.

6. Associated Consents

That associated Consent Application D10-037-2018, is approved and all related conditions of approval are fulfilled prior to the issuance of the consent certificate by the Secretary-Treasurer Committee of Adjustment.

7. Hydro-Geological Assessment

In order to review the hydro-geological conditions in support of the proposed severance, a well shall be constructed, or confirmation shall be provided of an existing well, on the severed parcel, in accordance with current standards described in Ontario Regulation 903 or as amended.

A Full Hydro-geological Assessment shall be completed in accordance with the City of Kingston's "Interim Standard Hydro-geological Assessments in Support of (1-3) Rural Land Severances" to ensure that the new well(s) or existing unused wells satisfy the City's criteria for construction, water quantity, water quality, and interference with surrounding wells. The applicant shall contact the Environment Division to confirm their requirements for approval of this condition.

Two (2) copies of the study and all relative information shall be provided to the Secretary-Treasurer of the Committee of Adjustment to be forwarded to the Environment Division for their review and further to confirm compliance to current City standards. Written acceptance of this study and its conclusions shall be provided by the Environment Division to the Secretary-Treasurer of the Committee of Adjustment prior to the issuance of the consent certificate.

Recommendations made by the Environment Division as a result of this assessment may be required to be included within a Development Agreement which is to be registered against the title to the lands.

8. Trans-Northern Pipeline

The Certificate of Official shall include and continue to recognize the Trans-Northern Pipeline Easement crossing the severed lot.

9. Civic Address

The owner/applicant shall contact the Planning Division once the Reference Plan has been deposited and provided to the City, and obtain a draft civic address for each new lot created and all appropriate fees shall be paid. The owner/applicant shall provide to the Secretary-Treasurer, Committee of Adjustment, written confirmation from the City that the civic address has been obtained prior to the issuance of the consent certificate.

10. Cash in Lieu of Parkland

That \$1,283.29 shall be paid to the City of Kingston as cash-in-lieu of land dedication for park or public recreational purposes for each new building lot being created. The applicant may choose to pay the fee through their DASH application, provide a certified cheque or provide payment at the front desk at 1211 John Counter Boulevard, prior to the issuance of the consent certificate.

11. Development Agreement

The owner shall enter into a development agreement satisfactory to the City to be registered on title to the severed and retained lands. All legal costs associated with the preparation and registration of the agreement shall be borne by the owner. The applicant shall provide a copy of the registered executed agreement to the Secretary-Treasurer, Committee of Adjustment, prior to the issuance of the consent certificate. The agreement shall contain conditions to ensure:

- a) That any new septic system on the severed or retained parcels shall conform to the provisions of the City's Official Plan and the owner shall obtain a Building Permit for the construction or alteration to a septic system.
- b) Any recommendations resulting from the hydro-geological assessment are included within the development agreement for the lands.
- c) In the event that deeply buried or previously undiscovered archaeological deposits are discovered in the course of development or site alteration, all work must immediately cease and the site must be secured. The Cultural Program Branch of the Ministry of Tourism, Culture and Sport (416-314-7132) and the City of Kingston's Planning Division (613-546-4291, extension 3180) must be immediately contacted.
- d) In the event that human remains are encountered, all work must immediately cease and the site must be secured. The Kingston Police (613-549-4660), the Registrar of Cemeteries Regulation Section of the Ontario Ministry of Consumer Business Services (416-326-8404), the Cultural Program Branch of the Ministry of Tourism, Culture and Sport (416-314-7132), and the City of Kingston's Planning Division (613-546-4291, extension 3180) must be immediately contacted.

- e) That the existing rights of Trans-Northern Pipeline Inc. and its easement shall be maintained in the event that service, upgrade or maintenance is required.

It is prohibited for any person to construct a facility across, on, along or under a pipeline or engage in an activity that causes a ground disturbance within the prescribed area unless the construction or activity is authorized or required by the orders made under subsection (3) or (4) or regulations made under subsections (5) or (6) and done in accordance with them.

• **Prohibition — vehicles and mobile equipment**

It is prohibited for any person to operate a vehicle or mobile equipment across a pipeline unless

(a) that operation is authorized or required by orders made under subsection (3) or (4) or regulations made under subsections (5) or (6) and done in accordance with them; or

(b) the vehicle or equipment is operated within the travelled portion of a highway or public road.

Should the applicant propose to cross the pipeline with a vehicle or construct a facility across, on, along or under the pipeline, the applicant would be required to contact TNPI prior to commencement of their work to receive the required authorization. This process can be initiated through Ontario One Call (1-800-400-2255).

- f) That the owner acknowledges that a portion of the site is within an Environmental Protection Area (EPA) or Floodplain (FP) and any development shall occur only outside of the defined EPA or FP area and shall be subject to Cataraqui Region Conservation Authority (CRCA) and O.Reg 149/06: Development, Interference within Wetlands and Alterations to shorelines and Watercourses and other Municipal By-Laws and requirements;
- g) That the owner acknowledges that the site has water frontage on Gilbralter Bay off Colonel By Lake, Part of the Rideau Canal which is a National and Historic Site of Canada and UNESCO World Heritage Site.





The Parks Canada Rideau Canal Office is the approval authority for all in-water and shoreline works along the Canal waterway. If the landowner wishes to carry out any new in-water and shoreline works for shoreline access, including but not limited to docks, decks, boathouses, launch ramps, beaches, dredging and shoreline stabilization devices, the Rideau Canal Office must be contacted. Written approval must be obtained prior to the commencement of construction. Work must adhere to the *Policies for In-water and Shoreline Works and Related Activities*.

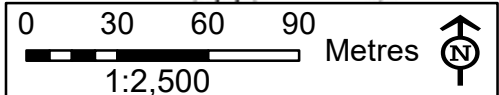
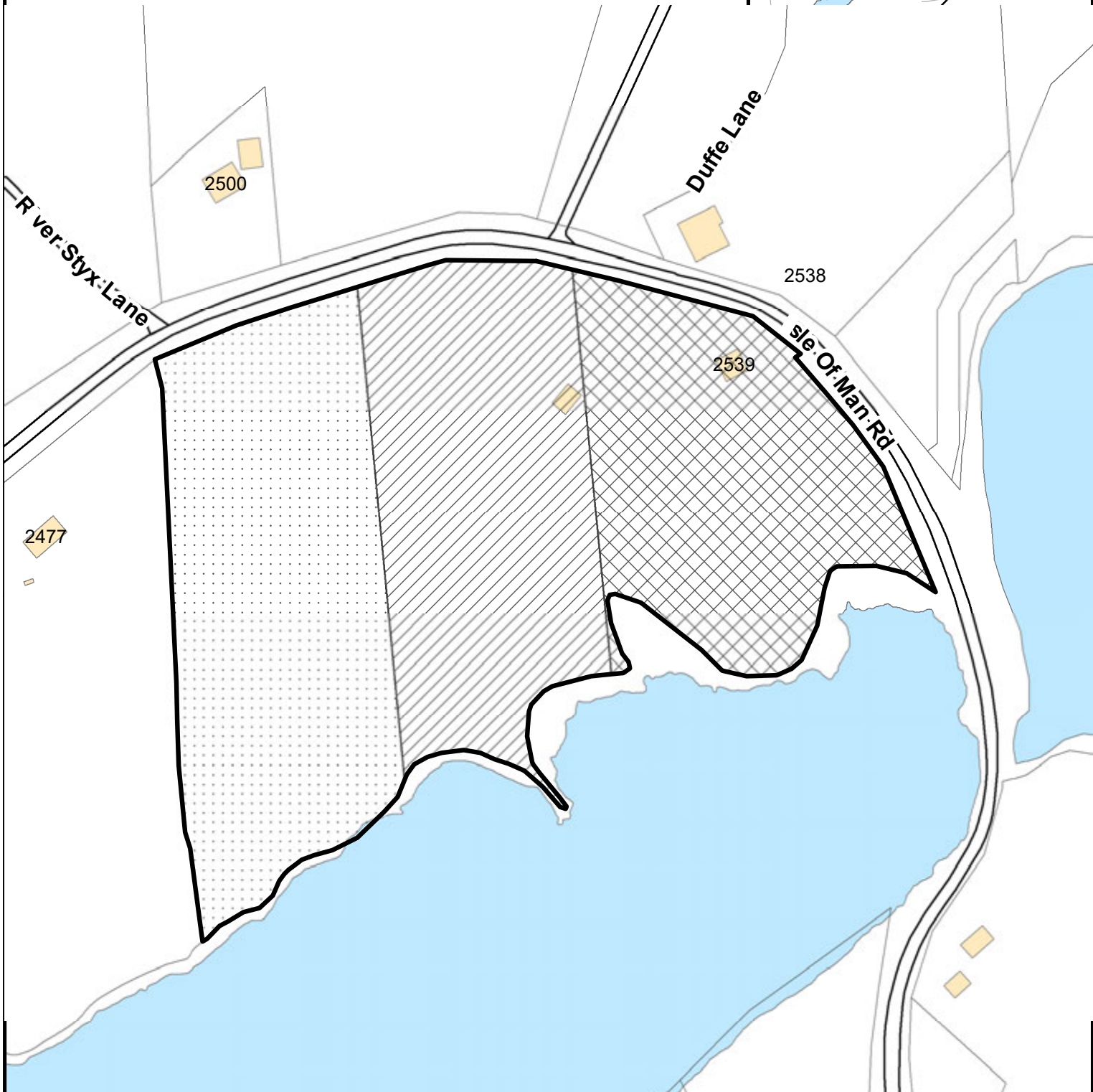
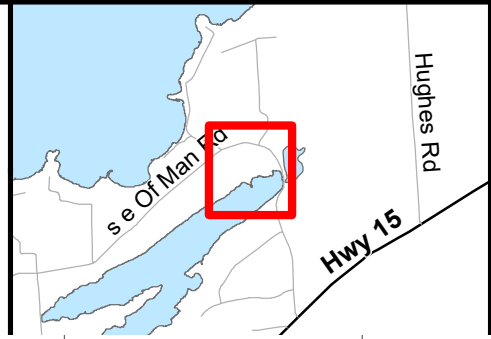
- h) That the owner be advised that any new or altered entrance to the site will require an entrance permit from the Engineering Division.
- i) That a Building Permit is required prior to the construction or removal of all structures 10 square metres in area or greater. Issues such as but not limited to O.B.C., grading and servicing will be agreed through the permit review process.
- j) That the recommendations from the Scoped Environmental Impact Study prepared by Pinchin dated October 29, 2021 and its proposed conditions be included in the Development Agreement.
- k) That the owner acknowledges and agrees with the City that:
 - a. The severed lands and the retained lands are located outside the limits of the municipal water and sewer service area and are not serviced by the City's water treatment plant or sewage treatment facility;
 - b. The owner shall be solely responsible for ensuring at all times and by all means that there is an adequate supply of potable water and adequate on-site sewage treatment facility maintained by the owner, for the owner's intended use of the severed lands and retained lands;
 - c. Despite the Committee of Adjustment approval to sever the lands, or that the City has approved zoning for either or both of the severed lands and retained lands that would permit construction of a building thereon, or that the City has or may at any time in the future issue a building permit or approve a site plan for either or both the severed lands and retained lands, the City will have no obligation to extend the municipal water area or provide municipal water services, or to extend the municipal sewer service area or provide municipal sewer services to or for the benefit of either the severed lands or retained lands;
 - d. Regardless of any order issued by the Ministry of the Environment or by the City of Kingston, Building Services in the future, the owner shall be solely responsible for the costs associated with any upgrading or extension of any private or municipal services required to be constructed to comply with such order.



Committee of Adjustment
Key Map

Address: 2539 Isle of Man Rd
File Number: D10-045-2020 & D10-037-2018

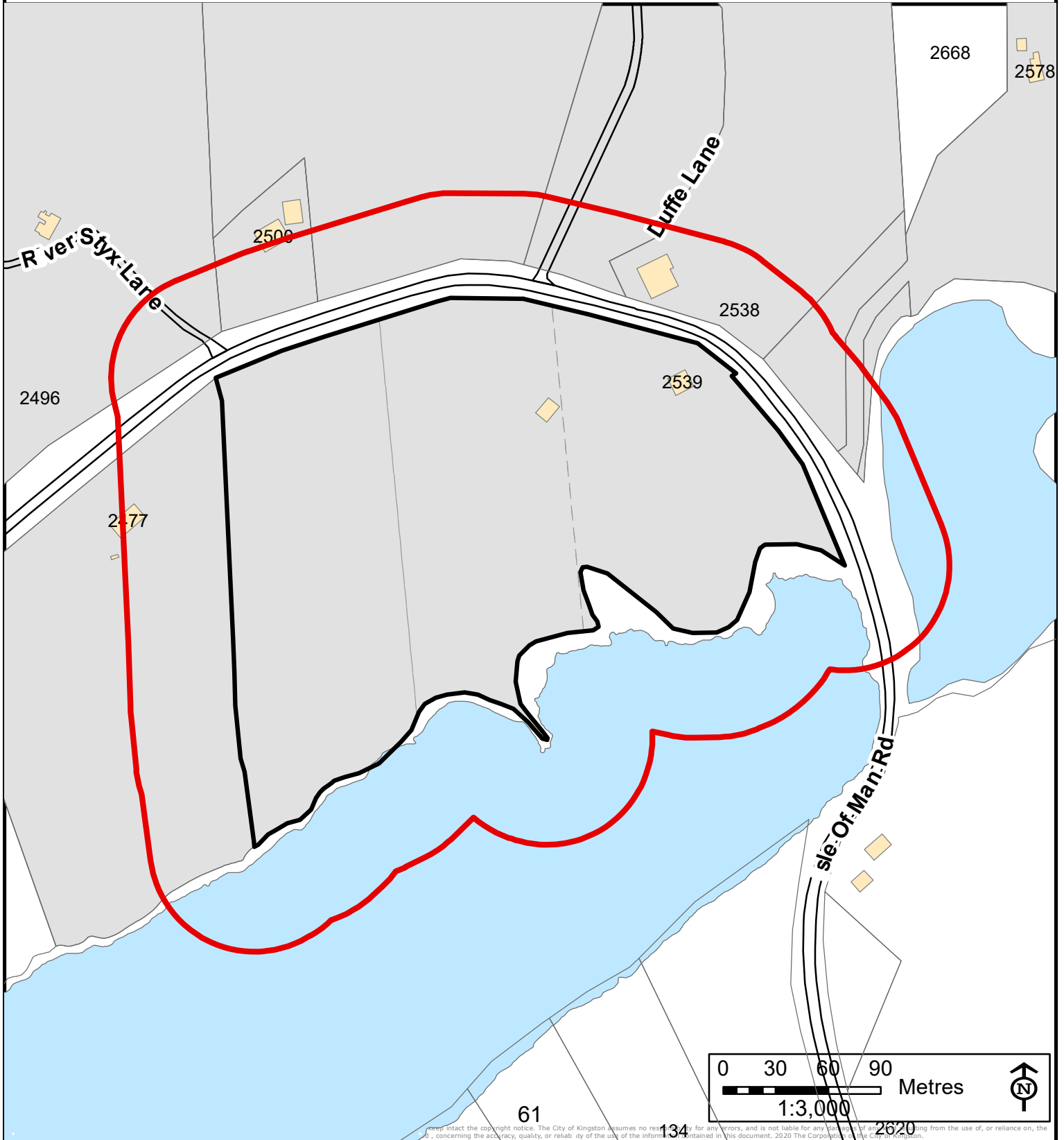
-  Subject Lands
-  Severed Lands
-  Severed Lands (Lot 2)
-  Retained Lands





Committee of Adjustment
Public Notice Notification Map
Address: 2539 Isle of Man Road
File Number: D10-045-2020 & D10-037-2018

- 60m Public Notification Boundary
- Subject Lands
- Property Boundaries
- Proposed Parcels
- 8 Properties in Receipt of Notice (MPAC)





Committee of Adjustment
Neighbourhood Context (2021)
Address: 2539 Isle of Man Road
File Number: D10-045-2020 & D10-037-2018

- Subject Lands
- Property Boundaries
- Proposed Parcels



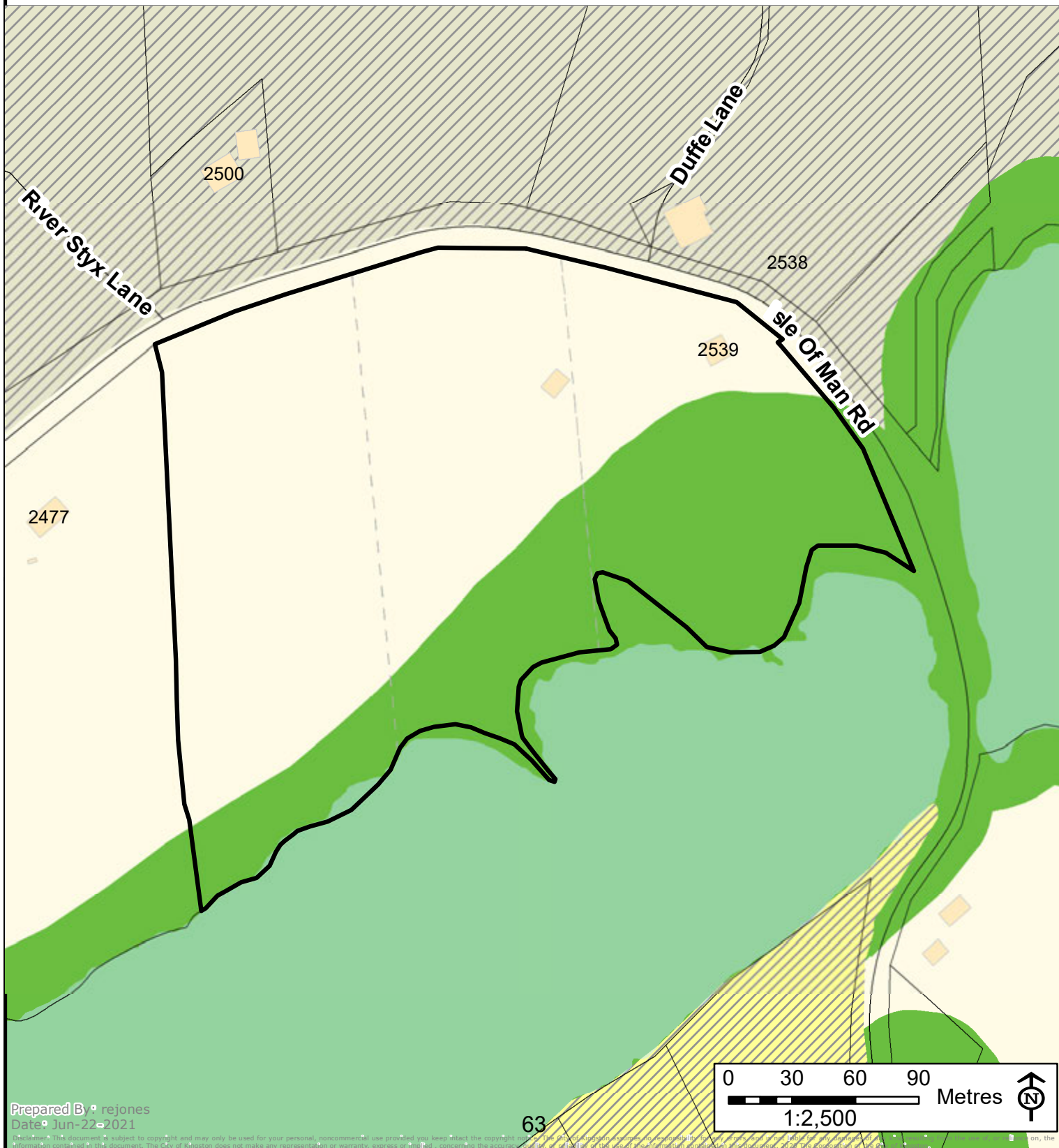


Planning Services

Committee of Adjustment
Official Plan, Existing Land Use

Address: 2539 Isle of Man Road
File Number: D10-045-2020 & D10-037-2018

- Subject Lands
- PRIME AGRICULTURAL
- ENVIRONMENTAL PROTECTION AREA
- ESTATE RESIDENTIAL
- RURAL





Planning Services

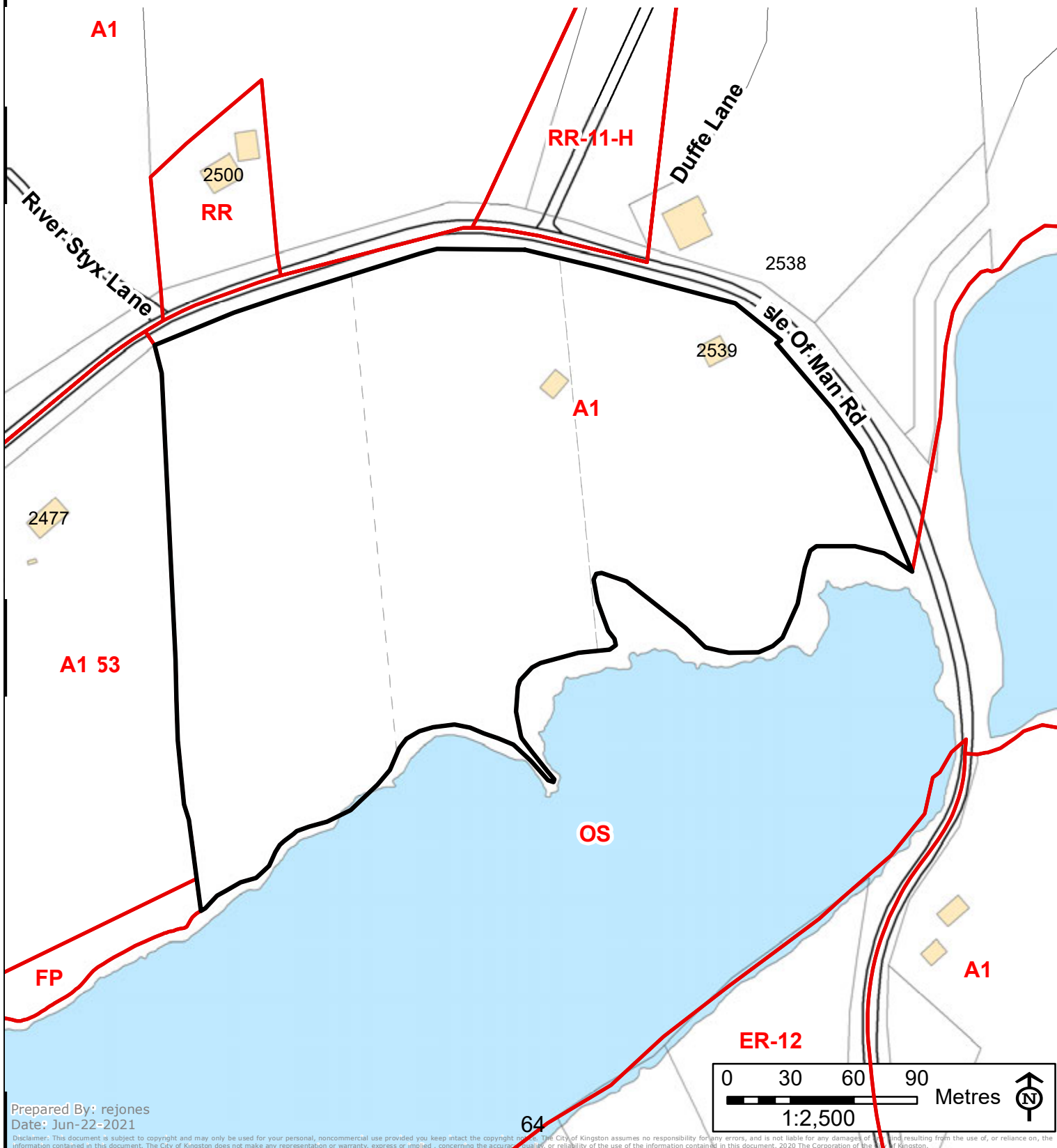
Committee of Adjustment

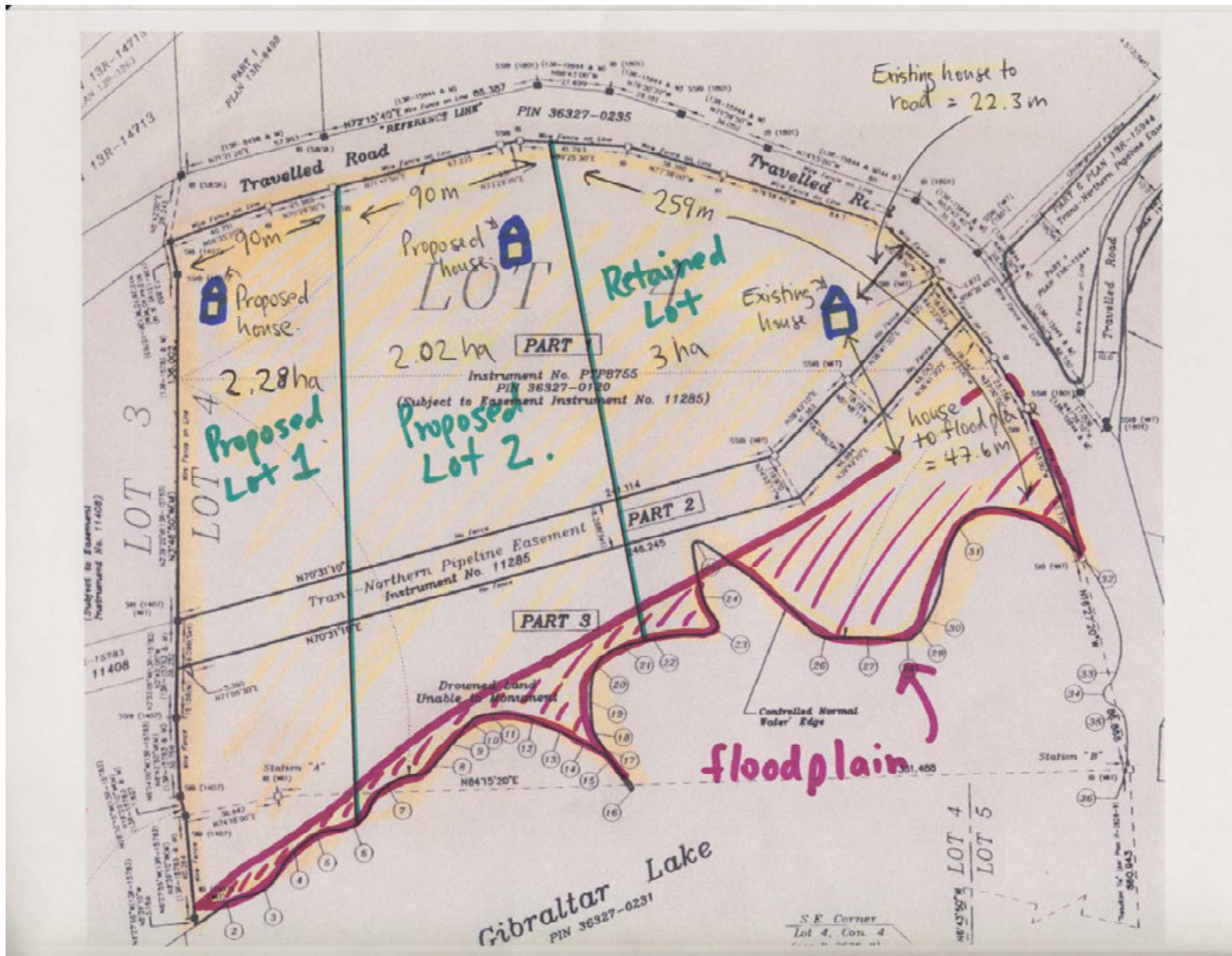
Existing Zoning - By-law 32-74, Map 1

Address: 2539 Isle of Man Road

File Number: D10-045-2020 & D10-037-2018

- Subject Lands
- Consolidated Zoning







View of Severed Parcel area from Isle of Man Road

Brad and Alison Smith
2500 Isle of Man Rd

July 9th/2021

[REDACTED]
[REDACTED]
July 9/21

Tim Fisher
Planning Services
1211 John Counter Boulevard
City of Kingston, Ontario
City, ST ZIP Code

Dear Tim Fisher:

I am writing with regard to the planned severance on Isle of Man Rd.

File Number D10-037-2018 & D10-045-2020 (Address 2539 Isle of Man Rd)

Firstly, we would like to make it very clear we **do not** object in any way to the proposed severance. The property was purchased a couple years back or so and the current owners have worked very hard to improve the existing building's condition and appearance.

We are however, quite concerned about what we perceive to be the newly severed vacant property's future plans. As we have been residents directly across the road for decades, we have a unique and very experienced understanding of our road, its current assets and very real limitations.

The city itself had been quite concerned for many years as to the inaccessibility of Isle of Man Rd. Its current residents have long understood the risks of access during inclement conditions. These include but not limited to:

- *Flooding of the road at the causeway when its lone culvert becomes dammed with ice in the spring run-off.*
- *In winter months, the inability to ascend the very steep hill which unfortunately begins directly after a sharp left-hand turn. The momentum required to climb the hill is lost for fear of going off the road into the barn directly ahead. (I've personally helped many neighbors out of the ditch as a consequence) If the turn is successfully achieved, the loss of momentum leaves the driver stuck on the hill or in the left-hand bank. (Again, I have had to help many neighbors in this situation as well)*
- *My wife had to personally testify to city officials at City Hall as to the school bus with young children that had gone off the road at this very location in winter. She had offered the driver refuge for the children in our home but quite understandably, reminded her he was not legally allowed to let them off.*

The intent of our letter is to remind those responsible that the concern the city has long had about the single access to this dead end section of Isle of Man Rd, (Which has often been compromised) has been well justified and should give pause to excess development on this side of the causeway as is currently taking place at the corner of Isle of Man Rd and Hwy 15 where the same conditions/limitations do not apply

The property in question has long been part of the original extremely prime agricultural farmland known as the Duffy farm. Excess development at the top of this hill involving multiple lots should be given serious second thought and at the *very least* limited in scope given (Especially emergency vehicle) compromised access.

We have lived here for decades as mentioned and we understand its realities perhaps better than anyone. Should you require any clarification, I am happy to be reached at any time.

Yours Sincerely,

Brad and Alison Smith