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Planning Report

To: Mayor and Council, Municipality of Magnetawan

From: Kent Randall & Chris Conti (EcoVue Consulting),
Township Planning Consultants

Subject: Application for Consent (Muszynski)

Property Location: Part of Lots 12 and 13, Concession 12, Geographic Township of Spence, Municipality
of Magnetawan
695 Nelson Lake Road

EcoVue File No.: 23-2125-03

Date: June 12, 2023

1.0 Recommendation

We recommend that Council receive the report dated June 12, 2023 from EcoVue Consulting Services regarding Consent application (Muszynski) and that Council approve the application and that provisional consent be given subject to the following conditions:

1. The applicant undertake and submit, to the satisfaction of the Municipality of Magnetawan, an Environmental Impact Statement which evaluates any and all potential impacts from the proposed severance on any present or adjacent natural heritage or hydrologic features and identifies appropriate building locations on the proposed severed parcel;
2. That any mitigation measures and recommendations contained in the Environmental Impact Statement be implemented through a development agreement with the Municipality of Magnetawan;
3. That confirmation be obtained that the proposed severed parcel can be adequately serviced by individual on-site septic systems and individual on-site water systems;
4. That the Applicants provide a draft copy of the deeds (with all schedules) to be approved by the Municipality prior to registration.
5. That a draft reference plan of survey be provided to the Municipality of Magnetawan for review prior to registration.
6. That confirmation be provided in writing from the Municipality of Magnetawan that a 911 Address Number to the new lot created has been assigned.



7. That a payment-in-lieu of a parkland dedication shall be paid in accordance with Section 51.1 of the Planning Act acceptable to the Municipality of Magnetawan in cash or certified cheque.
8. That all taxes, municipal, legal and planning fees associated with the processing of this application including fees under By-law 2011-11, 2011-16 and current Municipal Fees & Charges By-law including a 5% parkland dedication fee be paid;
9. The applicant provides confirmation from the Municipality of Magnetawan Roads Foreman with respect to entrance Municipal fees and disbursements (legal, engineering, planning), if any incurred by the Municipality with respect to this application, shall be paid for by the owner.

2.0 The Application

Tomas and Barbara Muszynski (Applicants) have applied to sever a parcel with an area of approximately 27 hectares and approximately 382 metres of lot frontage from the western part of their property on Nelson Lake Road. The intent is to use the proposed severed parcel for recreational purposes and separate it from the larger property. The proposed retained parcel will have an area of approximately 47 hectares and approximately 455 metres of lot frontage.

Nelson Lake Road in this area is oriented at an angle to the lot lines. The road frontage of the severed and retained parcels is not clear from the application. The exact dimensions of the proposed severed and retained parcels should be confirmed by survey prior to final approval of the severance. However, some minor adjustment in the dimensions of the parcels should not affect the Municipality and Planning Board approval of the consent.

The stated purpose of the application is to create one large additional parcel primarily to be used for outdoor recreational purposes. The proposed severed parcel contains no buildings or structures, and the Applicants are currently not proposing to construct buildings or structures on the severed parcel.

3.0 Subject Property

The subject property is approximately 74 hectares and located on the south side of Nelson Lake Road. Much of the property is heavily wooded and it contains a wetland and a small watercourse in its central portion. The eastern part of the property contains a dwelling and associated buildings.

It appears from the drawings submitted as part of the application that the Applicants may also own lands to the west of the subject property which are not part of the property at 695 Nelson Lake Road and are not part of this application.



The surrounding area is characterized mainly by large, wooded properties with some scattered residences located close to Nelson Lake Road. There are also residences associated with lakes that are scattered throughout the larger area.

The existing residential use is on the retained parcel which is intended to continue.

As noted above, the severed parcel is intended to be used for recreational purposes and there is no current proposal to construct buildings or structures on this parcel.

4.0 Planning Analysis

4.1 The Planning Act

The Planning Act, R.S.O., 1990, c.P 13, (Act), through Section 3 (5) (a), requires all decisions that affect a planning matter to be consistent with policy statements that are in effect on the date of the decision. Through this provision, the decision regarding the proposed consent must be consistent with the Provincial Policy Statement (PPS).

Furthermore, the authority for municipalities to grant severances emanates from Section 53 (1) of the Act which states:

(1) An owner, chargee or purchaser of land, or such owner's, chargee's or purchaser's agent duly authorized in writing, may apply for a consent as defined in subsection 50 (1) and the council or the Minister, as the case may be, may, subject to this section, give a consent if satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. 2021, c. 25, Sched. 24, s. 4 (1).

Severances are required to have regard for matters in Section 51 (24) of the Act through reference in Section 53 (12). Section 51 (24) states the following:

(24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

(a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;

(b) whether the proposed subdivision is premature or in the public interest;



- (c) *whether the plan conforms to the official plan and adjacent plans of subdivision, if any;*
- (d) *the suitability of the land for the purposes for which it is to be subdivided;*
 - (d.1) *if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;*
- (e) *the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;*
- (f) *the dimensions and shapes of the proposed lots;*
- (g) *the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;*
- (h) *conservation of natural resources and flood control;*
- (i) *the adequacy of utilities and municipal services;*
- (j) *the adequacy of school sites;*
- (k) *the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;*
- (l) *the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and*
- (m) *the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).*



Through Sections 51 (24) (c) and (g) severances must conform to the applicable Official Plan and Zoning By-law.

The above-noted requirements of the Act are addressed through the sections of this report that follow.

4.2 Provincial Policy Statement (2020)

4.2.1 *Managing and Directing Land Use to Achieve Resilient and Efficient Development and Land Use Patterns*

Section 1.1.1 states in part that healthy, livable and safe communities are sustained by promoting efficient development and land use patterns, accommodating an appropriate range and mix of land uses, including recreation, parks and open space, and avoiding development and land use patterns which may cause environmental or public health and safety concerns.

The proposed consent will create a large parcel, mainly for recreational purposes, which is consistent with land use patterns in the area. It will contribute to the range of land uses by providing a parcel for mainly recreational purposes.

While no development is currently proposed for the severed parcel, because of the presence of a woodland, a wetland and a watercourse on the property, the consent may raise environmental and safety concerns. In order to ensure consistency with the above policies it is necessary to provide an environmental evaluation to ensure that any concerns are mitigated. This matter is dealt with in greater detail later in this report.

4.2.2 *Rural Lands and Areas in Municipalities*

The provisions in Section 1.1.4 (Rural Areas in Municipalities) and Section 1.1.5 (Rural Lands in Municipalities) of the PPS are relevant as they relate to the proposed consent.

Section 1.1.4.1 refers to building on local character, conserving biodiversity, and considering the ecological benefits provided by nature. The proposed consent will create a large parcel primarily for recreational purposes which will be consistent with local character.

However, it contains woodlands, a wetland, and a small watercourse. Therefore, in order to demonstrate consistency with Section 1.1.4.1, it is necessary to ensure that biodiversity will be conserved and that ecological impacts are considered.



Section 1.1.5.2 sets out the permitted uses for rural lands in municipalities which include resource-based recreational uses. The proposed recreational use of the severed parcel is permitted and is consistent with this provision.

4.2.3 Natural Heritage

Section 2.1 of the PPS provides policies about Natural Heritage, and it applies to the proposed consent because of the presence of the wetland, woodland, and watercourse.

Section 2.1.1 states that natural features and areas are to be protected for the long term. Furthermore, Section 2.1.2 of the PPS states the following:

2.1.2 The diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.

Section 2.1.4 prohibits development in significant wetlands. Section 2.1.5 (b) and (d) further states that development and site alteration are not permitted in significant wildlife habitat unless it is demonstrated that there will be no negative impact on the natural feature or their ecological functions.

The wetland on the property has not been identified as significant and therefore development is not prohibited. Furthermore, it is not clear if there is significant wildlife habitat present on the site.

However, the intent of the above policies is to take appropriate action to protect natural heritage features and ensure that there is no negative impact on significant features and their functions.

Consents are defined in the PPS to be a form of development and the proposed consent must be consistent with the above policies. This potential impact on environmental features is addressed more further in this report in the context of the policies of the Official Plan.

Section 3.1 of the PPS provides policies for natural hazards. Section 3.1.1 generally directs development away from hazardous lands adjacent to streams and rivers that are impacted by flooding hazards. Section 3.1.2 prohibits development in areas that would be inaccessible during times of flood hazards unless safe access can be demonstrated and in floodways.

These policies are applicable to the proposed consent in relation to small watercourse that runs through a portion of the property. This matter is addressed more fully in this report in the context of the Official Plan policies.



Subject to the considerations above, the proposed consent is consistent with the PPS.

4.3 Municipality of Magnetawan Official Plan

The subject property is designated as Rural and Environmental Protection in the Municipality of Magnetawan Official Plan (MMOP). As noted in Section 5.2.1 of the MMOP, the Rural designation permits a wide range of uses including agriculture, forest management, conservation, residential dwellings, hunt camps, small scale commercial and industrial developments, and others.

The Environmental Protection designation identifies lands which possess physical characteristics which restrict development and may also include important natural heritage features. Uses in areas designated as Environmental Protection as stated in Section 5.3.1 are limited to conservation, forestry, wildlife areas, fishery resource management, public or private parks, and outdoor recreational activities which can be developed without adverse environmental impacts.

It appears from the Land Use Map, Schedule A that the proposed severed and retained parcels contain both areas within the Rural designation and the Environmental Protection designation. Therefore, the permitted uses including a residential dwelling could be allowed on portions of the proposed severed parcel that are within the Rural designation.

The retained and severed parcels contain portions of a wetland and watercourse. Schedule B of the Official Plan identifies environmental features, and it distinguishes between provincially significant wetlands and other wetlands. The wetland that is partially contained on the subject property is identified as 'Other Wetland' and therefore is not subject to the prohibitions in the Provincial Policy Statement (PPS) for wetlands that are provincially significant.

However, section 4.4 of the MMOP states the following:

Natural heritage features will be protected in the Municipality consistent with the Provincial Policy Statement to provide long term and sustainable environmental, economic and social benefits. This goal will be achieved by:

a) Identifying a continuous natural heritage system throughout the Municipality. This system will provide for preservation of important ecological functions and features;...

New development or alterations shall have no negative impact on the natural features or ecological functions of significant habitat of endangered or threatened species, other



significant wildlife habitat, fish habitat, a provincially significant wetland or other significant natural heritage feature or function. Where development is proposed within or adjacent to these areas, the approval authority shall require the submission of an Environmental Impact Assessment.

Furthermore, Section 4.5 contains policies for the protection of wetlands. It states in part:

Locally significant wetlands are shown as Locally Significant Wetlands on Schedule B. Wherever possible these areas should be left in their natural state. Where it can be demonstrated to the satisfaction of Council that there is no reasonable alternative for the logical development of lands other than to develop a portion of a locally significant wetland, the Municipality will impose site plan control to ensure that the appropriate mitigation measures are employed to minimize the impact on the wetland. No development or site alteration will be permitted in or within 120 metres of any areas identified as potential provincially significant wetlands until an evaluation is completed by a qualified wetland evaluator using the Ontario Wetland Evaluation System: Northern Manual to conform its significance, as well as to address any significant impacts through completion of an Environmental Impact Assessment.

Schedule B also identifies a large area as “Deer Yard” which includes the entire subject property. Section 4.6 states that the Ministry of Natural Resources has identified large portions of the Municipality as significant deer habitat. Development in these areas must be sensitive to impacts on deer wintering areas and vegetation removal in these areas must be minimized. Furthermore, it states:

Within the significant deer habitat areas shown on Schedule B new lots should avoid areas of dense conifer cover or be of a sufficient size to provide a suitable development area including access and services, outside the most significant deer wintering habitat areas described above. The minimum lot size shall be 90 metres frontage and 90 metres depth.

It appears from Schedule B to the MMOP that the subject property does not contain deer wintering habitat. The severed and retained parcels appear to meet the size and frontage criteria stated above.

In addition to the above requirements, Section 5.3.3 of the MMOP states the following:

Building setbacks may be imposed from the boundaries of Environmental Protection areas as found in the implementing Zoning By-law or otherwise as the result of an approved



Environmental Impact Assessment. The severity of the hazard or the sensitivity of the environment shall be the determining factor.

In view of the natural heritage features present on the property and the potential for a dwelling to be constructed on the severed parcel, it would be prudent for an Environmental Impact Statement (EIS) to be prepared prior to final approval of the consent which identifies locations where a dwelling can be constructed on the severed parcel without negative impacts on significant natural heritage features and functions. The EIS should consider if the significance of the identified natural heritage features should be re-evaluated, including if deer wintering habitat is present on the subject property and if the wetland has provincially significant features. It should also determine if there are other natural heritage features present on the subject property which could be impacted.

Section 4.2.2 of the MMOP includes policies for flood hazards. Through this section, engineering studies are required to determine impacts on flood elevations and flow velocities. However, this policy should apply where there is potential for development to directly impact the floodplain and where there is no opportunity to avoid it.

In this case, there may be a floodplain associated with the watercourse that runs through the property. However, given the size of the proposed severed parcel, there should be no need for the development of a dwelling to encroach into the floodplain of the watercourse. The potential location of a dwelling on the severed parcel should be in the area designated Rural close to Nelson Lake Road. Based upon Schedule B of the MMOP, the watercourse is contained within the wetland in the northern portion of the property and the wetland covers a wide area in this location. It is highly unlikely given the small size of the watercourse that its floodplain would extend beyond the wetland boundary. Restrictions on development in the wetland and setbacks that may be required through an EIS should encompass any floodplain that may be present in this area.

Therefore, our opinion is that an engineering study to determine the extent of the floodplain of the watercourse is not required at this time. If the Applicants proposed a dwelling in the southern portion of the severed parcel, then one may be necessary at that time.

Section 7.1 of the Official Plan contains policies that govern severance applications. It states that consents shall only be considered if they are minor and do not require the extension of municipal services.



Section 7.1.1 provides the criteria for the creation of new lots. As required in Section 7.1.1 (a) and (b), the proposed severance is only for one (1) lot; therefore, no plan of subdivision is required. Further, the proposed severed lot size meets the requirements of the MMOP and the Zoning By-law.

Section 7.1.1 (c) states that proposed lots must front on a municipally maintained public road except for certain lots in the shoreline designation. Section 7.1.1 (d) states that lots for hunt camps, fishing camps or similar uses may be permitted on unmaintained municipal road allowances or on private rights of way to publicly maintained roads, provided agreements are in place to alleviate the municipality of liability.

Section 7.1.1 (e) requires the new lot to have road access where traffic hazards are avoided.

The proposed severed parcel is located on a municipally maintained public road. It has sufficient frontage on Nelson Lake Road that access can be provided in a way that avoids traffic hazards.

Section 7.1.1.(f) states that lots must allow for an adequate building site and allow for the provision of sewage disposal and water supply and safe access and a building site outside of the floodplain and any other hazard land. While the Applicants are not proposing construction, given the size and location of the proposed severed parcel, it is expected that the consent complies with this policy.

Section (g) is not applicable to the application.

Section 7.1.1. (h) requires that lots for permanent residential use shall be located on a year round maintained municipal road or provincial highway. While the current intent is to use the severed parcel for recreational purposes, the lot is located on a maintained municipal road.

Section 7.1.1.(i) provides restrictions on the number of lots that can be created within the Rural designation, on each original hundred acre lot and on each 50 acre lot that existed on the date when the MMOP was approved. It appears from the information provided with the application that the proposed consent complies with this policy.

In addition, Section 7.1.1 (j) states, "*the creation of any lot will not have the effect of preventing access to or land locking any other parcel of land.*"

There was some concern during pre-consultation that the severed parcel might be landlocked, but the Applicants have provided further information to demonstrate that this will not be the case.



Section 7.1.1. (k) requires that severances on lands adjacent to livestock operations should meet the Minimum Distance Separation requirements and demonstrate that proposed water supply has not been contaminated. This section does not apply to the location of the proposed consent as there are no barns within 1,000 metres of the property.

In view of the above considerations our opinion is that the consent complies with the requirements of Section 7.1.1. of the MMOP.

As indicated above, because the residential use is permitted on the part of the property that is designated Rural, an EIS is required to ensure that an appropriate building location can be identified where development will not cause negative impacts on the natural heritage features and functions.

Subject to the above requirement, our opinion is that the proposed consent complies with the MMOP.

4.4 Municipality of Magnetawan Zoning By-law No. 2001-26

The subject property is zoned Rural (RU) and Environmental Protection (EP) in Magnetawan Zoning By-law 2001-26.

The By-law permit a wide range of uses in the RU zone including detached dwellings, farms, hunt camps, logging activities, and resource management activities. The regulations in Section 4.6.2 require a minimum lot size of 10 hectares and minimum lot frontage of 134 metres.

Both retained and severed parcels meet the lot size requirement for the RU zone. Both lots also meet the lot frontage requirements which the By-law defines as the horizontal distance between the side lot lines.

Section 4.16 sets out the standards for the EP Zone. It states that the only permitted uses are conservation, resource management activities and passive public parks. In Section 4.16.2 the By-law states that no buildings or structures are permitted in the EP zone except for pump houses and those required for flood and erosion control. No size and frontage requirements are included in Section 4.16.

In Section 3.7 the By-law indicates that lands zoned EP may be included in the calculation of lot area and yard requirements except for the area for the area below the normal or maintained high water mark. It appears from Schedule B to the MMOP that a portion of the watercourse runs through the retained parcel and eliminating the area below the high water mark will reduce the lot area. However, it is not expected that removing this area would reduce the lot area to the extent that the lot size will be less than 10 hectares.



In consideration of the above, our opinion is that the proposed consent complies with the applicable requirements of Comprehensive Zoning By-law No. 2001-26.

4.5 Summary of Planning Considerations

In view of the above, the proposed consent is consistent with the applicable requirements of the PPS and complies with all requirements of the Official Plan subject to the need for an EIS to address potential impacts on natural heritage features. The proposed consent also complies with Zoning By-law No. 2001-26.

With regard to Section 51 (24) of the *Planning Act*:

- The proposed consent is not expected to affect matters of provincial interest as required in Section 51 (24) (a);
- Pursuant to Section 51(24) (b) the consent is not premature, and it is in the public interest,
- The consent conforms to the Official Plan as required in section 51 (24) (c) and the land is suitable for the purpose of the consent as required in Section 51 (24) (d),
- The road access is sufficient for the consent pursuant to Section 51 (24) (e),
- The dimension and shapes of the proposed lots is appropriate as required in Section 51 (24) (f),
- Pursuant to Section 51 (24) (g) the consent complies with standards in the zoning By-law and other applicable restrictions,
- An EIS will ensure that the proposed consent will not impact natural heritage features on the site. In addition, any construction on the property will avoid areas prone to flooding. Therefore, the proposed consent has regard for the conservation of natural resources and flood control as required in Section 51 (24) (h).
- Pursuant to Section 51 (24) (i) appropriate utilities and services are available for the property.
- Regarding Section 51 (24) (j) the proposed consent is not expected to impact the need for school sites.

- A cash in-lieu parkland dedication will be required pursuant to Section 51 (24) (k).
- Pursuant to Section 51 (24) (l) any buildings that may be constructed on the severed parcel will be subject to energy conservation measures in the Ontario Building Code.

Therefore, in view of the above, the proposed consent has appropriate regard for Section 51 (24) of the Act.


Our planning opinion is that the consent is consistent with, or complies with all applicable planning provisions, subject to the conditions listed in the recommendation.

5.0 Recommendations

That the consent application by Tomas and Barbara Muszynski to create an additional Lot on Nelson Lake Road within the Municipality of Magnetawan be approved and that the provisional consent be recommended to the South Parry Sound District Planning Board subject to the conditions contained in this report.

Respectfully Submitted,

ECOVUE CONSULTING SERVICES INC.



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