

# MUNICIPAL PROPERTY DEVELOPMENT

## Twelve things you should know when developing property

ILCO BY THE SEA

27<sup>th</sup> Annual Conference

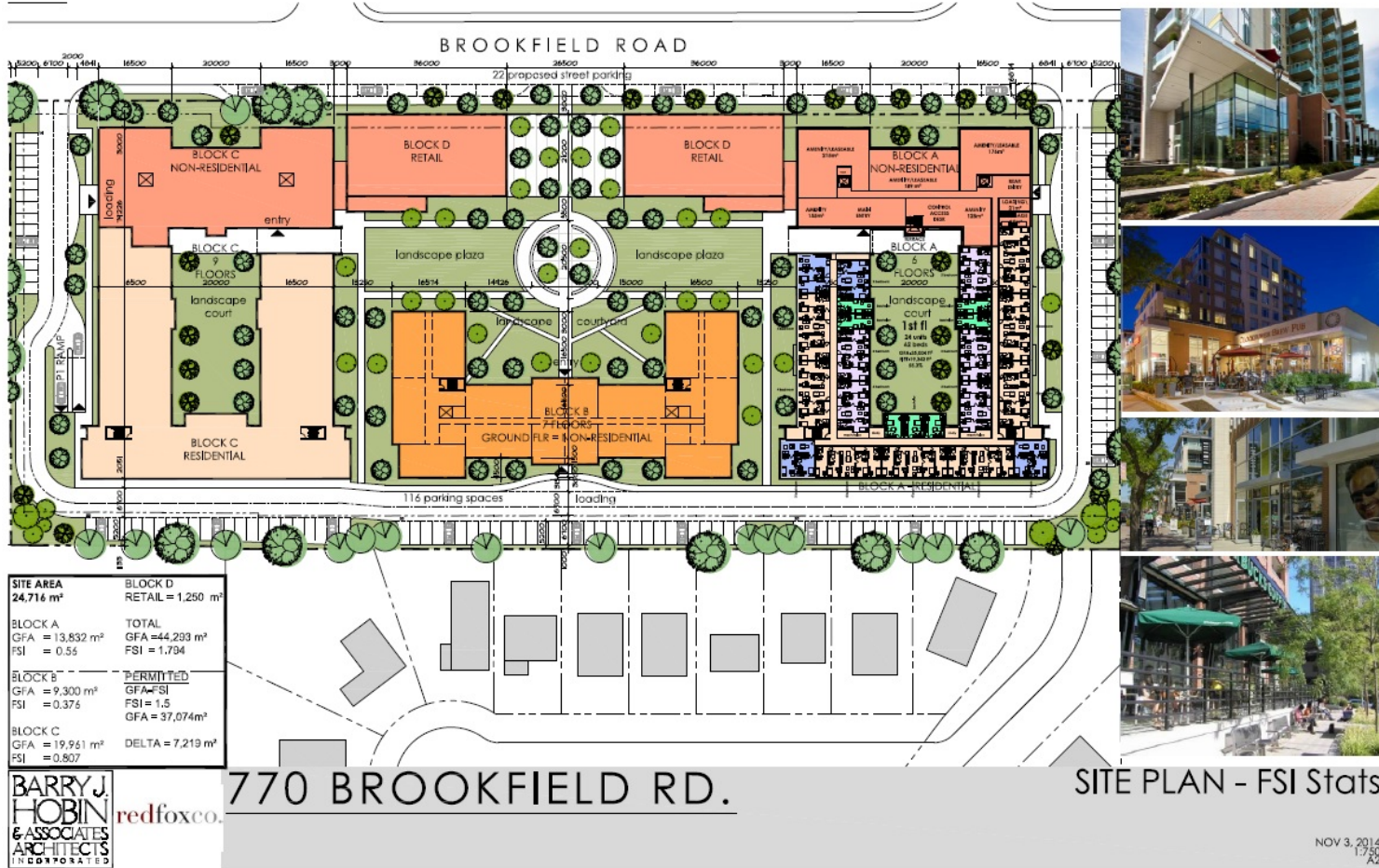
May 18, 2017

Presented by Paul Rabinovitch C.S.

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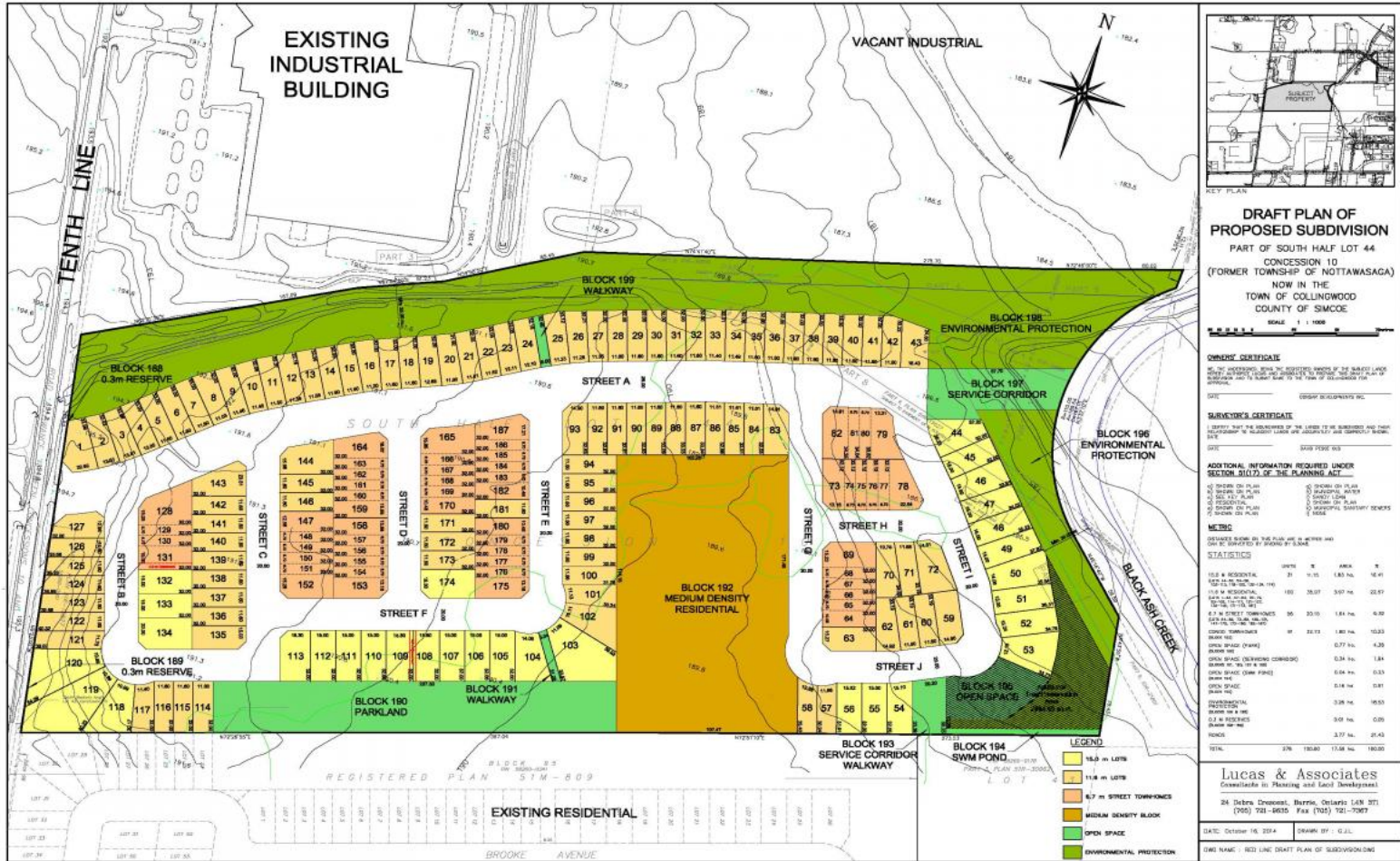
# Site Plan Agreement



# SITE PLAN CONTROL AGREEMENT

- Section 41 of the Planning Act allows Municipalities to enter into Site plan Control Agreements/ Development Agreements.
- Site Plan Control Agreements restrict owners from making future changes to their property without an amendment.
- Prior to a Municipality entering into a Site Plan Control Agreement, it must first designate the area that they wish to be included as subject to Site Plan Control in their Official Plan. Next, they must enact a Site Plan Control By-law.
- Site Plan Control Agreements are normally registered on title.
- When acting for a purchaser of a property that is subject to a Site Plan Control Agreement, it is important to write the local Municipality for Site Plan Control Agreement compliance.

# Draft Plan Approval



# Draft Plan Approval

- Section 51 of the Planning Act deals with the development of land by way of a Plan of Subdivision.
- This Section is broadly worded to ensure complete protection for the Municipality.
- The Developer must submit an Application to the Approval Authority.
- The Developer then receives, Draft Plan Approval.
- Each agency submits their requirements to the Approval Authority which are then incorporated into the Draft Plan Conditions.
- All requests the Municipality makes of a developer must be “reasonable” and may be challenged by a developer at the Ontario Municipal Board.
- In order for the Developer to obtain final approval for the Plan of Subdivision, it must obtain a clearance letter from each agency or utility provider, the Municipality and the Approval Authority.

# Earth Works Agreement



# Earth Works Agreement

- An Earth Works Agreement allows a Developer to move earth on his property but that is all.
- Usually the Developer must provide a cash deposit of at least \$10,000.00 .

# Pre-Servicing Agreement



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## 4. Pre-Servicing Agreement

- If a Developer wishes to start construction of roads and municipal services prior to registration of the Plan of Subdivision, it would normally be required to enter into a Pre-Servicing Agreement.
- A Pre-Servicing Agreement can be very beneficial to Developers
- Developers normally only deposit 30% of the total cost of all services.
- A Pre-Servicing Agreement can save Developer both time & money.

# Subdivision Agreement



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# 5. Subdivision Agreement

## 5.1 Subdivision Agreement

- The Subdivision Agreement sets out all of the Developer's obligations and responsibilities and itemizes all requirements of the Municipality, as well as all other agencies and utilities that had input into the Draft Plan Conditions.
- The Developer must post the required security, for 100% of the cost of the services, less the value of any work completed. The Developer must also obtain a clearance letter from each agency and utility provider.
- The Draft M-Plan is prepared by the Developer's Surveyor and approved by the Municipality.
- When acting for purchasers of lots in plans of subdivision that are subject to a Subdivision Agreement, you should ask the Municipality for compliance with the terms of the Subdivision Agreement, or in the alternative, ensure that any title insurance policy being obtained protects purchasers in this regard.

## 5.2 Documents to be Registered

- The documents normally prepared by the Municipality's lawyer or Developer's lawyer for registration on title, include:
  - Plan Document
  - Inhibiting Order
  - Subdivision Agreement
  - Transfers in Fee Simple
  - Partial discharges of mortgages
  - Depositing of Reference Plans
  - Transfer of Easements
  - Postponements of mortgages
  - Removal of Inhibiting Order

# Condominium Development



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## 5.3 Condominium Development

- Similar to Subdivisions but streamlined Municipal Process
- Agreement is usually a hybrid of Subdivision Agreement and Site plan Control Agreement.
- Developers can apply for exemption under the Condominium Act to expedite development approvals process.

## By-Laws

# New Boulevard By-Law



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## 6. By-Laws

- Establish/assume/open a road
- Declaring land to be surplus and sold
- Closing a road
- Purchase land
- Part lot Control Exemption By-law
- A By-law deeming lots or blocks on a Registered Plan of Subdivision to no longer be lots or blocks on a Plan of Subdivision
- By-law to Upload or Download roads



# Easements



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## 7. Easements

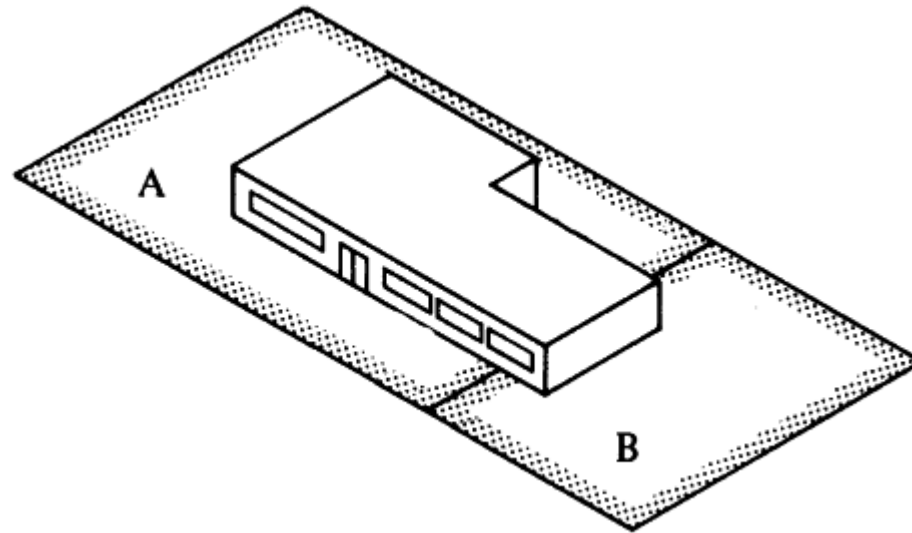
- Most easements for Municipalities are easements in gross, meaning they do not have to set out the dominant lands which they benefit.
- Removal of easements is accomplished by registration of Transfer, Release and Abandonment

# 8. Municipal Agreements

## 8.1 Road Access Agreements

- Some Municipalities will enter into Road Access Agreements with private parties to allow them to use an Original Unopened Crown Road Allowance to access their property.
- Property accessed by Road Access Agreement usually have an additional form of legal access to the property, but the use of that access may be impractical due to rock outcroppings or swamps.

# Encroachment



## 8.2 Encroachment Agreements

- Encroachment Agreements allow an existing building or structure that encroaches onto a Municipal road allowance to remain in place.

# Water Front Issues



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## 9. Waterfront issues

- Municipalities can pass by-laws addressing shoreline uses.
- The issues can be very involved and controversial.
- In Ontario, some municipalities regulate up to 200 feet into the water. Some Municipalities require building permits even if the entire structure is located in water.

# Expropriation





## 10. Expropriation

- There is a very specific statutory regime that must be strictly adhered to with respect to expropriations.
- School Boards are not exempt from the Planning Act the way that Municipalities are, but do have the power to expropriate in Ontario.
- Injurious affection occurs when a statutory authority expropriates part of an owner's land and there is a reduction in market value of the remaining land, or it can arise due to construction in the area of the property that has been expropriated.

# Road Access



# 11. Road Access

- Ontario's Road Access Act (R.S.O. 1990, c. R. 34) was originally passed in 1978 to prevent the arbitrary closing of private or "access" roads, and to resolve disputes.
- The Road Access Act defines "access road" as a road on private land that serves as the only motor vehicle access route to one or more parcels of land.
- Properties that have no access via a Municipal road may have access via private roads. The access could be by way of a registered easement/right-of-way.
- If there is no registered easement there may still be a prescriptive easement if not in Land Titles.
- There can be a number of access issues impacting zoning and building permit requirements in a Municipality.

# 12. Road Allowances

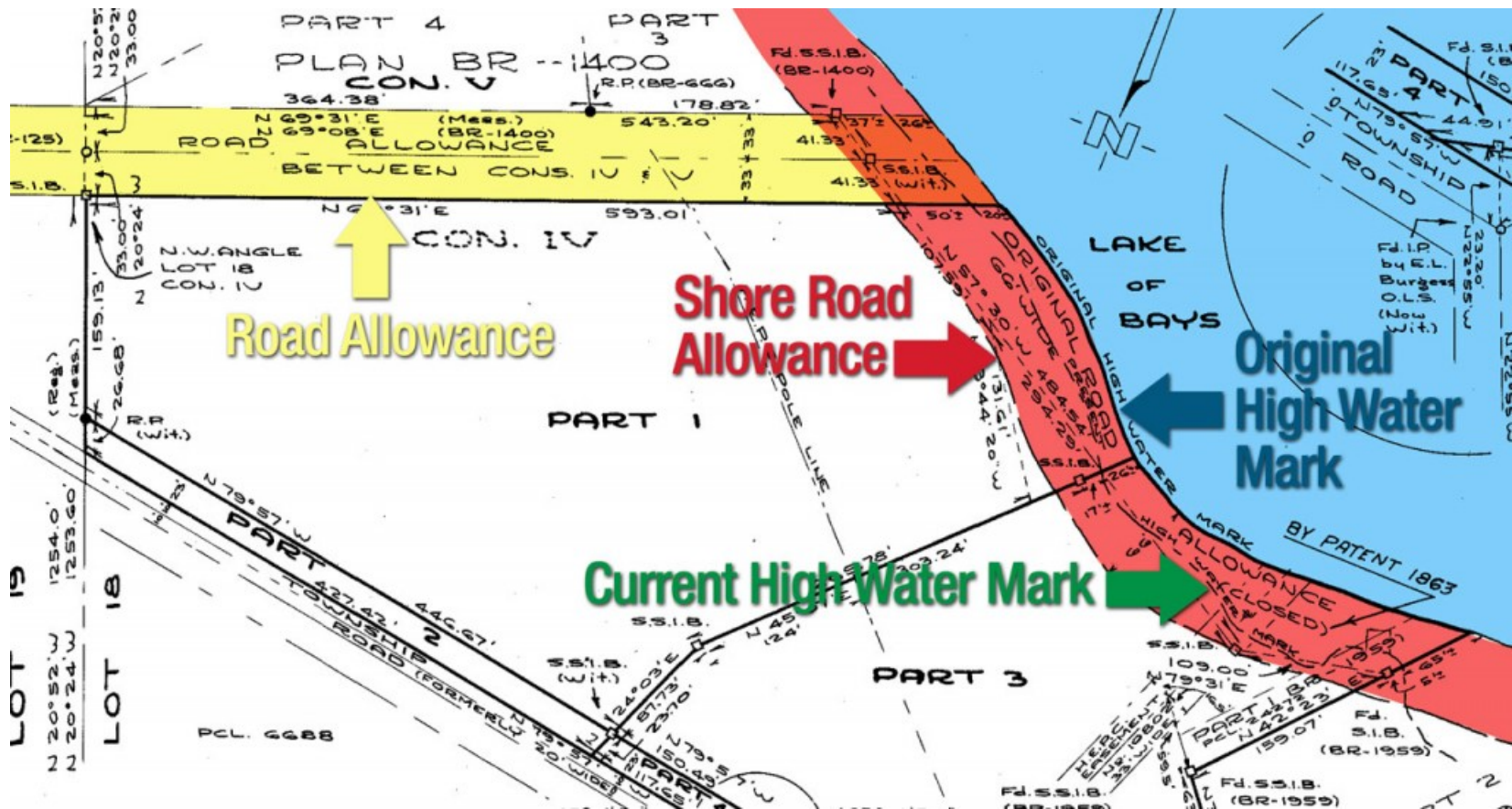
## 12.1 Original Crown Road Allowances

- Original Crown Road Allowances were laid out by the Crown in the 1800s in a grid pattern.
- The Original Crown Road Allowances were 66 feet in width
- 1913 the Crown downloaded all Original Crown Road Allowances to local Municipalities

## 12.2 Unopened Original Crown Road Allowances

- Many Unopened Original Crown Road Allowances in northern Ontario never became roads, and remain wilderness today
- When Unopened Original Crown Road Allowances are not established/assumed/opened roads, they are private Municipal property that has not been designated for public use. Most Municipalities allow the general public to use Unopened Original Crown Road Allowances.
- Unopened Original Crown Road Allowance will normally create natural severances, however, it is not possible to sever a portion of a property without obtaining a description acceptable to the local Registry Office.

# Shore Road Allowance



## 12.3 Original Shore Road Allowance

- Original Shore Road Allowances are specific types of Original Crown Road Allowance that the Crown laid out around the shores of many lakes and rivers when travel along waterways was common.
- Historically, Crown Patents or Grants for Original Shore Road Allowances often included reservations to the Crown for certain rights

## 12.4 Colonization Roads

- In parts of Ontario, Colonization Roads, which are different than Original Crown Road Allowances, were constructed in the 1850s to early 1900s.
- Colonization Roads were built by settlers who were provided with money by the Crown to build roads in order to encourage colonization. Colonization Roads were therefore built in locations that made sense at the time of colonization.
- Some Colonization Roads have been assumed or opened by municipalities.



## 12.4 Colonization Roads

- Other Colonization Roads have fallen out of use, and may now be “bush roads” that can be travelled by snowmobiles or all-terrain vehicles only.
- If a Colonization Road runs through a property that your client is considering purchasing, your client should be aware that the property may be subject to the public’s right to continue to use the Road as it has been used in the past, and/or in the way that it is currently used.
- One potential benefit of a Colonization Road that is still in use today, is that it may create a natural severance.

THIS INDEX MAP SHOWS ALL  
 PROPERTIES EXISTING IN  
 BLOCK 48073 - SHEET 1  
 ON OCTOBER 1, 2007

SCALE  

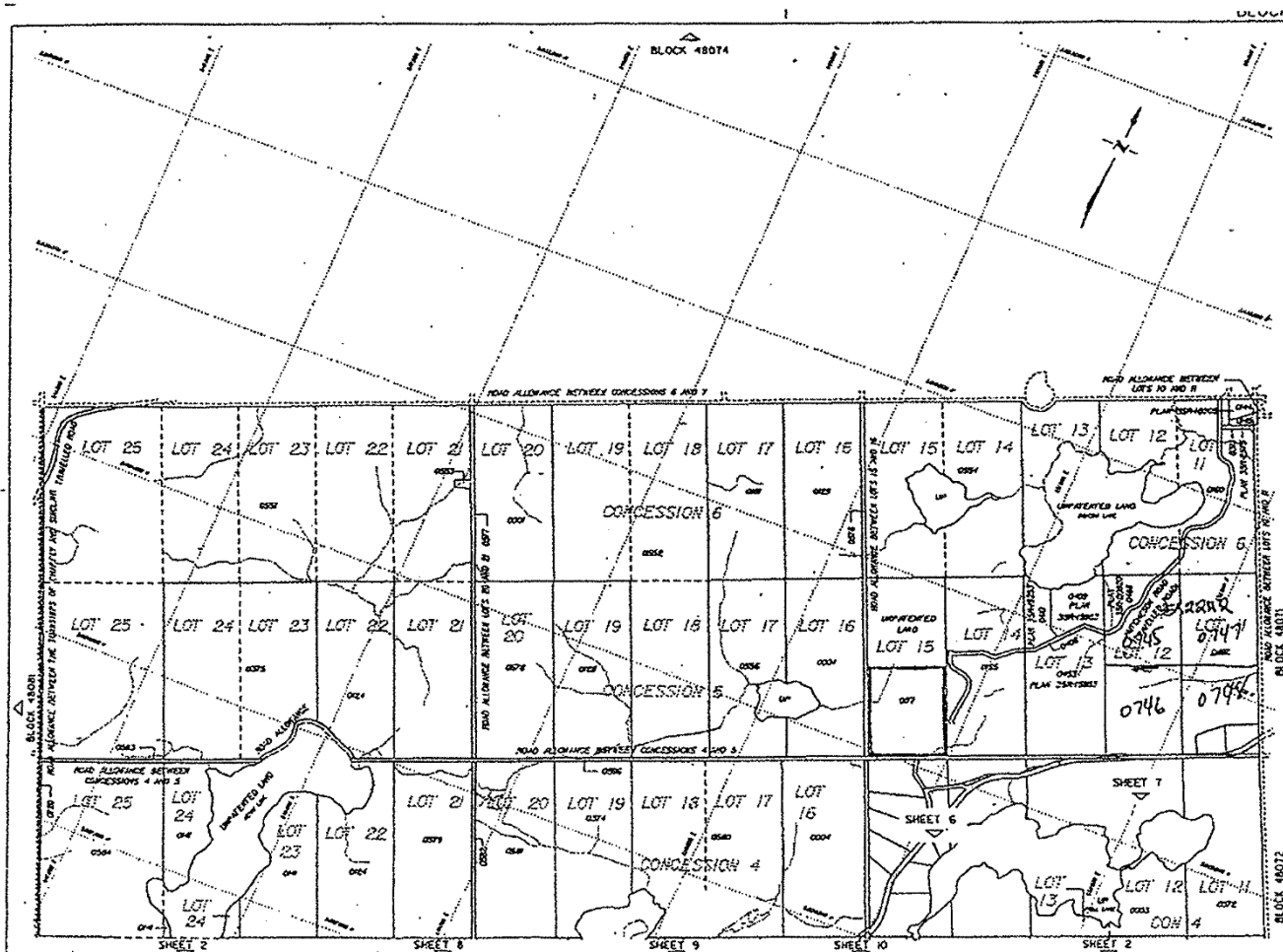

PROPERTY INDEX MAP  
 BLOCK ~~48073~~  
 THE TOWNSHIP OF  
 LAKE OF BAYS  
 DISTRICT OF  
 MUSKOKA  
 (OFFICE 35)

Lot Number	Area
LOT 25	004
LOT 24	004
LOT 23	004
LOT 22	004
LOT 21	004
LOT 20	004
LOT 19	004
LOT 18	004
LOT 17	004
LOT 16	004
LOT 15	004
LOT 14	004
LOT 13	004
LOT 12	004
LOT 11	004
LOT 10	004
LOT 9	004
LOT 8	004
LOT 7	004
LOT 6	004
LOT 5	004
LOT 4	004
LOT 3	004
LOT 2	004
LOT 1	004

LEGEND  
 PROPOSED PROPERTY BOUNDARY: ————  
 EXISTING PROPERTY BOUNDARY: ————  
 LOT OF GREAT PROPERTY UNIT: ————  
 EXISTING PROPERTY NUMBER: 0746  
 EXISTING PROPERTY NUMBER: 0747  
 EXISTING PROPERTY NUMBER: 0748  
 EXISTING PROPERTY NUMBER: 0749  
 EXISTING PROPERTY NUMBER: 0750  
 EXISTING PROPERTY NUMBER: 0751  
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 EXISTING PROPERTY NUMBER: 0759  
 EXISTING PROPERTY NUMBER: 0760

NOTES  
 THIS MAP IS NOT A PLAN  
 IT IS A REPRESENTATION OF THE LAND AND ITS  
 BOUNDARIES AND SHOULD NOT BE USED FOR  
 LEGAL PURPOSES WITHOUT THE ASSISTANCE  
 OF A PROFESSIONAL SURVEYOR.  
 THE INFORMATION ON THIS MAP IS NOT  
 GUARANTEED AND IS SUBJECT TO CHANGE.  
 ANY INFORMATION ON THIS MAP WHICH  
 DIFFERS FROM THE OFFICIAL RECORDS  
 OF THE LAND REGISTRY COMMISSION  
 SHALL BE DEEMED TO BE CORRECT.

10000



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ServiceOntario

LAND  
REGISTRY  
OFFICE #35

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 1 OF 1  
PREPARED FOR Pfourrain2  
ON 2013/08/21 AT 10:25:51

48073-2 (LT)

SUBJECT TO RESERVATIONS IN CROWN GRANT

PROPERTY DESCRIPTION: PCL 32152 SEC MUSKOKA; PT LT 15 CON 4 SINCLAIR PT 1 35R12868 (RESERVING A ROW OF THE SINCLAIR COLONIZATION ROAD SHOULD IT PASS THROUGH THE SAID LANDS); LAKE OF BAYS ; THE DISTRICT MUNICIPALITY OF MUSKOKA

PROPERTY REMARKS: (CROWN GRANT SEE PN385) - *ORDERED*

ESTATE/QUALIFIER: RECENTLY;  
FES SIMPLE FIRST CONVERSION FROM BOOK  
ABSOLUTE

EIN CREATION DATE:  
2004/10/18

OWNERS' NAMES: CAPACITY SHARE  
*W&M, Trustee, Ontario* BENO

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIS FROM	PARTIES TO	CERT/ CRKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2004/10/18 **						
35R12868	1989/10/02	PLAN REFERENCE				C
LT155352	1990/04/12	TRANSFER	528,000		<i>W&amp;M, TRUSTEE, ONTARIO</i>	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

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**The End**

**Thank you**