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November 25, 2020

Paul Silva
Rinaldi Silva LLP Law Firm
720 Guelph Line, Suite 301
Burlington, ON L7R 4E2

Dear Sir:

Re: 169 and 193 Weirs Lane, Flamborough
Planning Act severance opinion

I am writing to provide my opinion whether the above two properties can be dealt with separately in compliance with the *Planning Act* or are considered merged such that a consent under the *Planning Act* would be required.

THE PROPERTIES

169 Weirs Lane according to agreement of purchase and sale between Jaspreet Kaur as buyer and the Estate of Marjorie Kenyon and William David Kenyon is described as part of lot 4, concession 1, Flamborough being part 1 on plan 62R-8926.

It matches the title set out on PIN 17490-0097 (LT).

193 Weirs Lane according to agreement of purchase and sale between Robert Eric Bernstein as buyer and the Estate of Marjorie Kenyon and William David Kenyon is described as part of lot 4, concession 1, Flamborough as in CD423342.

It matches the title set out in PIN 17691-0096 (LT).

Both properties are registered in the names of Marjorie Kenyon and William David Kenyon.

ARE THEY MERGED OR CAN THEY BE DEALT WITH SEPARATELY?

In my opinion, the two properties are merged for *Planning Act* purposes as a result of the following analysis.

1. In 1961 and 1966, William and Marjorie Kenyon acquired substantial properties in Planning Act of lot 4 concession 1, Flamborough. For our purposes, they owned 4 parcels of land shown outlined in green yellow pink and blue on the attached plan.
2. By transfer CD71549, registered November 15, 1977, William and Marjorie transferred to Marjorie alone the 4 parcels of land.
3. By transfer CD76550, registered January 5, 1978, William acquired the land shown outlined in brown on the attached plan.
4. By instrument 418620CD registered July 10, 1987, Marjorie transferred all of the land she owned alone to William except for parts 1, 2, and 3 on plan 62R-8926, the red triangular shaped parcel. The transfer contained a stipulated one time only consent it being the intention that the land being transferred would merge with the land already owned by William being the land outline in brown which he had purchased in 1978.
5. Part 1 retained by Marjorie is the roughly triangular parcel of land flanking the pink and the blue parcels and outlined in red. Parts 2 and 3 were essentially road widenings along Weirs Lane.
6. For clarity, part 1 was never conveyed with consent. It was the retained land, the consented parcel being the parcel merged other land owned by William. In order that it merge with William's other land, the consent had to be stipulated as a one-time only consent such that subsection 50(12) {the once a consent always a consent provision of the Planning Act} would not apply to that parcel of land.
7. This transfer separated part 1 from the remainder of the property.
8. As a result, it would have been critical that William and Marjorie keep the registered ownership of the now two parcels in different names to avoid a further merger of the property.
9. By instrument 423342 CD registered August 12, 1987, William transferred the consented large parcel and the brown parcel to himself and Marjorie as joint tenants. These lands are described as the existing PIN 17490-0096 (LT).
10. Merger of title occurred by transfer WE551474 registered June 4, 2008 when Marjorie transferred the small parcel from herself to herself and William as joint tenants. This property is all of PIN 17490-0097 (LT).
11. Both titles were once again under common ownership and neither had the benefit of section 50(12) that would have allowed each property to be dealt with separately.

CONCLUSION

The two parcels or PINs are registered in the names of the same parties, Marjorie and William (or his estate) and neither can be dealt with separately without compliance with the *Planning Act*. There is no other exception to the merger of which I am aware and there is no provision whereby the properties can be separated by court order (such as by court order under the *Partition Act*) or otherwise. A consent would seem to be required to deal with each property separately.

Yours truly,

TORKIN MANES LLP



Sidney H. Troister
SHT/rs

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