

Memorandum to the City of Markham Committee of Adjustment

October 31, 2022

File: B/021/22 and B/020/22
Address: 36 and 38 Eureka Street, Unionville
Applicant: Minto Communities Inc. (Anderson Marques)
Agent: Minto Communities Inc. (Anderson Marques)
Hearing Date: Wednesday, November 9, 2022

The following comments are provided on behalf of Heritage Section staff:

The applicant is proposing to retain the existing heritage dwellings on 36 and 38 Eureka Street (the “subject lands”) while severing and conveying a rear portion of each property (approximately 45 metres) to the City for future use as parkland.

Consent Application B/021/22 and B/020/22

Pursuant to the provisions of Section 53 of The *Planning Act*, R.S.O. 1990, c.P.13, as amended, and Ontario Regulation No. 197/96, the applicant is requesting provisional consent to:

36 Eureka Street

- a) Sever and convey a parcel of land with an approximate lot area of 1,430 sq. m (0.1430 ha) (Part 1); and
- b) Retain a parcel of land approximate lot area of 1,482 sq. m (0.1482 ha) (Part 2).

38 Eureka Street

- a) Sever and convey a parcel of land with an approximate lot area of 1,429 sq. m (0.1429 ha) (Parts 1 and 2); and
- b) Retain a parcel of land approximate lot area of 1,477 sq. m (0.1477 ha) (Part 3).

BACKGROUND

Property Description

Location

The subject lands are located on the west side of Eureka Street and are generally bound by low-rise residential properties to the north and east along Fred Varley Drive, Eureka Street and Station Lane, and multi-unit residential properties to the south and east along Highway 7 and Anna Russell Way, a privately-owned right-of-way.

Existing Structures and Lot Usage

The two properties that compose the subject lands each contain a two-storey detached dwelling. Both were constructed in 1947 as per MPAC records. Mature vegetation exists on and adjacent to the subject lands.

Heritage Status

The subject lands are located at the western periphery of the Unionville Heritage Conservation District (the “UHCD” or the “District”), which is designated under Part V of the *Ontario Heritage Act*. The properties/buildings are classified as Class ‘B’ within the District Plan meaning that they are of contextual value.

Proposal

The applicant is proposing to combine the subject lands with 34 Eureka Street and the existing Anna Russell Parkette to create a new 0.62 ha (1.53 ac) municipally-owned park.

In order to permit this proposed use, the applicant has submitted a Zoning By-law Amendment (“ZBA”) application to rezone the entirety of 34 Eureka Street and the rear portions of 36 and 38 Eureka Street from Residential Three (“R3”) to Open Space One (“OS1”) once severed. The ZBA application was approved by Council at its meeting on September 13, 2022 (refer to By-law 2022-104).

Note that the parkland dedication is associated with the ongoing review of Site Plan Application (SPC 22 116603) to facilitate a townhouse development at 17 Anna Russell Way.

COMMENTS

Consent applications are evaluated in the context of Section 51 (24) of the *Planning Act*, as well as provincial and local land division related policies.

Land Division

In order for land division to occur under the *Planning Act*, a public process is required that ensures provincial interests and local planning concerns are both satisfied. In Markham, land division is regulated within a policy-led planning system that consists of a number of inter-related types of legislation and policies including:

- The *Planning Act*
- The Provincial Policy Statement (PPS)
- Other Provincial Plans
- Markham Official Plan (2014)
- Community Improvement Plans
- Local Zoning By-laws (or Minister’s Zoning Order)
- Site Plan Control Area By-law

1. The Planning Act

The *Planning Act* in Ontario provides the framework for the province’s policy-led planning system. All decisions regarding consent applications must:

- Have regard to the matters of provincial interest listed in section 2 of the Act;
- Have regard to criteria listed in subsection 51(24) which relates to the subdivision of land, and includes, but is not limited to:
 - Lot dimensions and shapes;
 - Restrictions of the land;
 - Interrelationship with site plan control matters

Each of these criteria is explored below:

a) Matters of Provincial Interest

The subject lands do involve a matter of provincial interest, that being section 2(c) “*the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest*”. The subject lands contain significant cultural heritage resources.

b) Lot Dimensions and Shapes

This is a matter that is addressed in the comments on land severance policies of the Markham Official Plan (refer to section 3 of this memo).

c) Restrictions on the Land

The restrictions on the subject property relate to the fact that the property is officially designated pursuant to Part V of the *Ontario Heritage Act*. Council has adopted a heritage conservation district plan through a specific by-law. This heritage plan provides policies and design guidelines to guide alterations and development. The owner must obtain a "Heritage Act" permit from the municipality to alter any part of the property, or to erect, demolish or remove any building on the property. Therefore any new development (i.e. lot creation) is subject to the restrictions and guidance found in the heritage conservation district plan as well as those in the Official Plan.

d) Interrelationship with Site Plan Control Matters

The subject property is also located within a site plan control area (refer to section 5 of this memo).

2. Consistency with the Provincial Policy Statement

The Provincial Policy Statement (PPS) sets the policy foundation for regulating the development and use of land in Ontario. Decisions in respect of the exercise of any authority that affects a planning matter shall be consistent with the Provincial Policy Statement.

Section 2.6 of the PPS addresses cultural heritage resources. The policy requires that significant built heritage resources and significant cultural heritage landscapes (a heritage conservation district) shall be conserved. The term 'conserved' is defined as: *"the identification, protection, use and/or management of cultural heritage and archaeological resources in such a way that their heritage values, attributes and integrity are retained"*.

No built heritage resources will be lost, and the reduction of the existing lot sizes via severance is not viewed as being detrimental to the heritage attributes of the subject lands as well as the overall character and integrity of the District.

3. Conformity with the Official Plan

The Official Plan is a municipality's chief planning tool to provide direction to approval authorities and the public on local planning matters. It contains land use planning objectives as well as policies in areas such as land use, land division and conservation of cultural heritage resources.

Section 10.5 of the Markham Official Plan 2014 (partially approved on November 24/17, and updated on April 9/18), notes that it is the policy of Council that the Committee of Adjustment shall be guided by the general intent and purpose of the Plan in making decisions on minor variances to the zoning by-law and consent applications.

Land Use Policies

In the Official Plan, the subject property is designated "Residential - Low Rise" which provides for low rise housing forms including single detached dwellings. Section 8.2.3.5 of the Official Plan outlines infill development criteria for the "Residential Low Rise"

designation with respect to height, massing and setbacks. This criteria is established to ensure that infill development is appropriate for the site and generally consistent with the zoning requirements for adjacent properties and properties along the same street, while accommodating a diversity of building styles. In considering applications for development approval in a “Residential Low Rise” area, which includes variances, development is required to meet the general intent of these development criteria. Regard shall also be had for the retention of existing trees and vegetation.

There is no new built development being contemplated on the lands and publicly owned parkland is a use that is permitted in all land use designations.

The Markham Official Plan also includes applicable policies respecting **land severance** (Section 10.3.2 - Consents) and **heritage conservation** (Section 4.5 – Cultural Heritage Resources).

Land Severance Policies

For land severance, regard is to be given to matters under Section 51(24) of the *Planning Act*, including having regard to adjacent land uses, access and services. Section 10.3.2.4 of the Official Plan provides for additional development criteria that must be considered including that the lot(s) comply with the cultural heritage protection policies in Sections 4.5.3.9 and 4.5.3.10.

The proposed severance application will have negligible impact on the relationship of the subject lands to Eureka Street, maintaining the existing visual connection of each heritage dwelling to the street while also maintaining their contextual value to the UHCD as described in the District Plan.

As to adjacent uses, regard is also to be given to the compatibility of the size, shape and proposed use of the lots to be created. The subject lands in their current configuration are of considerable depth at approximately 90 metres. Following severance, both properties will have a depth of approximately 46 metres which is generally consistent with the lot configuration of properties within the UHCD. As such, it is the opinion of Staff that there will be sufficient rear yard amenity space for both retained dwellings, and that the consent applications will not have an adverse impact on the cultural heritage value of the subject lands or the District.

Heritage Conservation Policies

From a heritage conservation policy perspective, two of the overall goals of the Official Plan are “to protect established neighbourhoods, heritage conservation districts...by ensuring that new development is compatible and complementary in terms of use, built form and scale” and “to celebrate Markham’s unique character by protecting cultural heritage resources and archaeological resources...to foster interaction between people and connections to their community” (Section 2.2.2).

Section 4.5 provides policy guidance on identification/recognition, protection, and development approvals. Two key development approval policies of Council are:

- To provide for the protection and conservation of cultural heritage resources or the mitigation of adverse effects on cultural heritage resources as a condition of minor variance and severance approval and associated agreements (Section 4.5.3.9); and

- To evaluate each land severance and variance proposal that directly affects a cultural heritage resource itself and adjacent lands on its own merits and its compatibility with the heritage policies of this Plan and the objectives and policies of any applicable heritage conservation district plan. This shall include the preservation of the existing lot fabric or historical pattern of lot development on the specific street or in the immediate neighbourhood where it contributes to the uniqueness, and forms part of, the historical character of the area. (Section 4.5.3.10)

The retained lots are of sufficient size and configuration to conserve the heritage attributes of each property and, as noted above, maintains consistency with the lotting pattern of the District. The creation of new municipally-owned parkland enabled by these applications adds amenity space for residents and visitors to the UHCD, while complementing the generally verdant landscape character of the District.

It is recommended that as a condition of the consent approval, a Heritage Easement Agreement be obtained to further protect the retained cultural heritage resources. Markham Council approved a policy concerning when a heritage easement should be secured as part of development approval, including when a heritage structure is to be conserved on either the retained or conveyed parcel as a result of a consent application to the Committee of Adjustment. In these instances the municipality will recommend that a Heritage Easement Agreement be secured as a condition of approval.

Unionville Heritage Conservation District Plan

The Unionville Heritage Conservation District (UHCD) Plan provides policy direction relevant to the consent application. Regarding Class 'B' buildings, of which both properties that comprise the subject lands are identified, Section 2.4 ("Building Classification") states the following:

- Class 'B' Buildings that are important in terms of contextual value.
 - They may not be of significant historical or architectural value, however they contribute substantially to the visual character of the village landscape;
 - They support and help define the character of the District.

Further, Section 4.2.1 ("Conservation and Restoration of Heritage Buildings") states that "Heritage buildings should be protected from adverse effects of development".

Regarding land severance and minor variances, Section 7.2.4 of the UHCD Plan states:

- Each land division proposal and variance should be evaluated on its own merits and as to its compatibility with the objectives and policies of the District Plan; and
- Consideration should be given to the maintenance of variable lot sizes and frontages as this is an important factor in defining the uniqueness and proportion of the existing streetscape and pattern of development in heritage areas.

Based on the above review, the proposed consent application does conform to the land division and heritage conservation policies of the Official Plan, including the policies of the UHCD Plan as adopted by Council. As such, it is the opinion of Staff that the impact of the consent application on both the cultural heritage value of the subject lands, and

the built-form character of the District are minimal, and that the application can be supported from an Official Plan conformity perspective.

Staff/Agency Comments

Heritage Markham Committee

Heritage Markham reviewed the applications at its meeting on August 23, 2022 and had no objection to the requested land division. Refer to Appendix “C” for a copy of the meeting extract.

Urban Design Staff

The City’s Urban Design Section has indicated that they support the requested land division subject to the construction of a fence along the rear (west) property line of the subject lands in order to delineate the boundary of the future park. Details of the fencing strategy will be submitted as part of future Site Plan Control (SPC) review process.

Engineering Staff

The City’s Engineering Department supports the requested land division.

External Agencies

Toronto and Region Conservation Authority (TRCA)

TRCA provided comments via email dated October 3, 2022 indicating that they have no objection to the requested land division provided the following conditions are met:

1. That the outstanding review fee in the amount of \$1,470 per property (2021 Planning Fee Schedule – Consent – Minor) be remitted to TRCA;
2. That the severed lot be conveyed to the City of Markham for Parkland purposes.

TRCA confirmed via email dated October 6, 2022 that the applicant has paid the outstanding review fee for the two applications.

Metrolinx

Metrolinx provided comments via memorandum dated September 28, 2022 indicating that they have no objection requested land division.

Public Input - Comments from Community

Written submissions have been received from two interested parties, and their input has been considered in the preparation of this report. It is noted that additional information may be received after the writing of the report, and the Secretary-Treasurer will provide information on this at the meeting.

CONCLUSION

Planning Staff have reviewed the applications with respect to Section 51 (24) of The Planning Act, R.S.O. 1990, c. P.13, as amended, and are of the opinion that the consent requests are supportable given direction as contained within the Act. Staff recommend that the Committee consider public input in reaching a decision should any be provided.

Please refer to Appendix “D” for conditions to be attached to any approval of these applications.

PREPARED BY:

A handwritten signature in black ink, appearing to read 'E. Manning'.

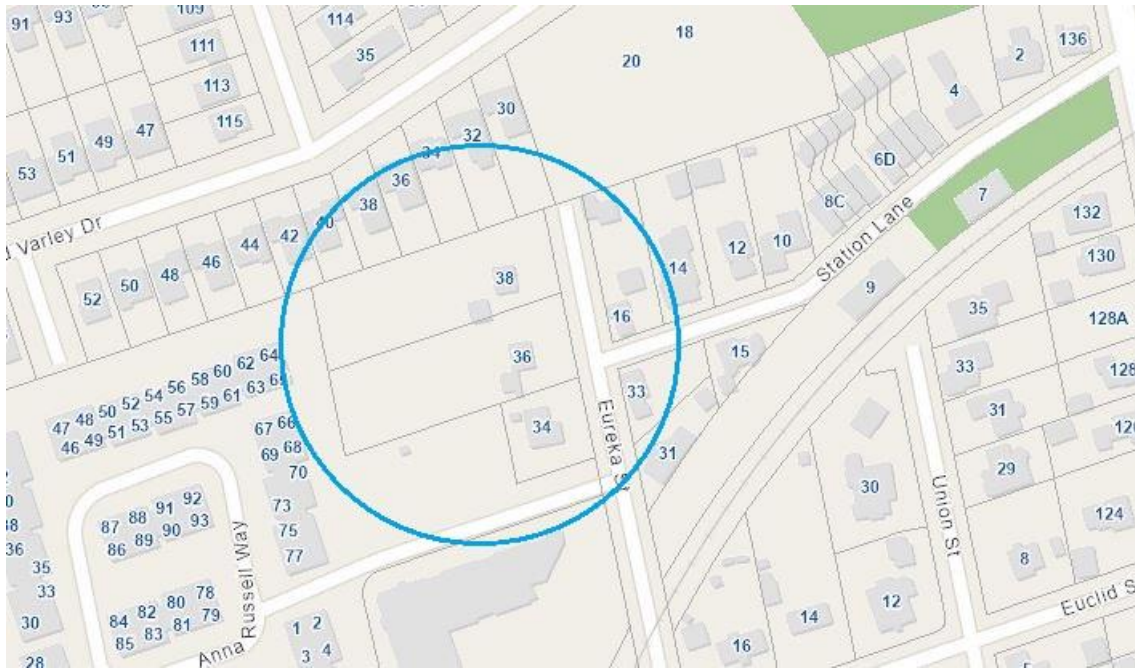
Evan Manning, Senior Heritage Planner

REVIEWED BY:

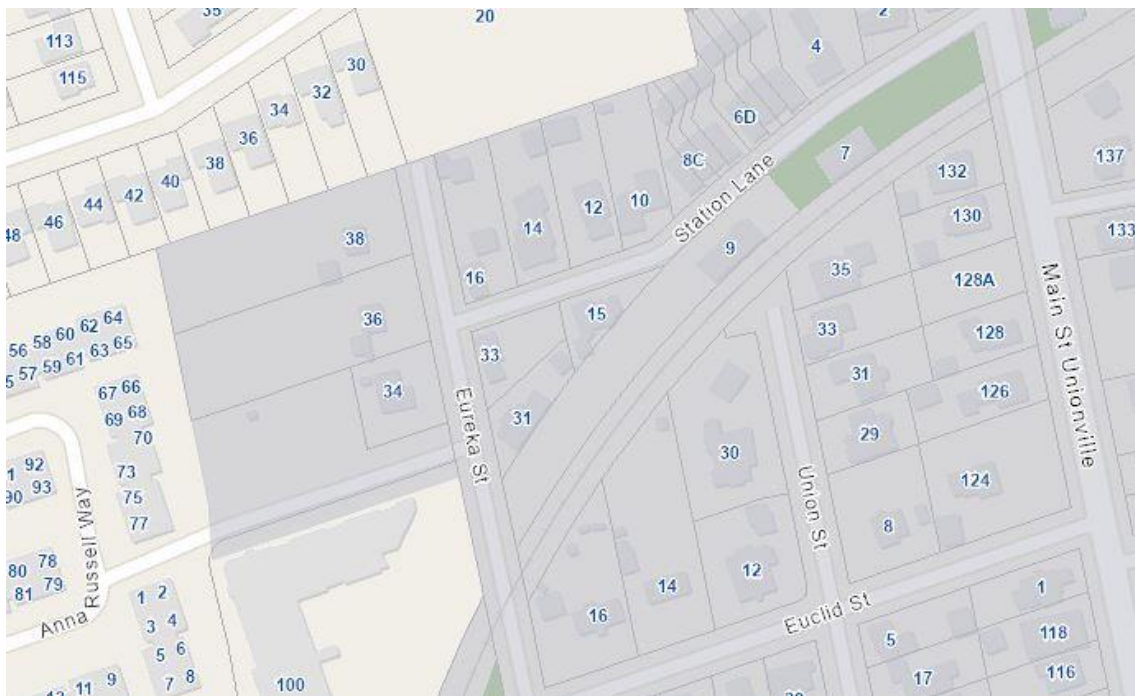
A handwritten signature in black ink, appearing to read 'Regan Hutcheson'.

Regan Hutcheson, Development Manager, Heritage Section

APPENDIX "A" LOCATION MAPS



The subject lands circled in blue (Source: City of Markham)

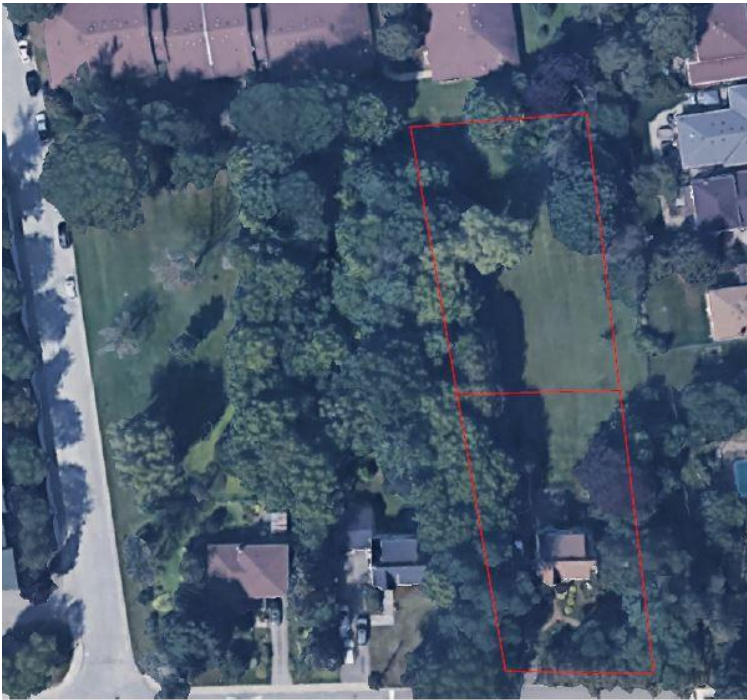


The relationship of the subject lands to the Unionville HCD [shaded in purple] (Source: City of Markham)

APPENDIX “B”
IMAGES OF THE SUBJECT LANDS



The primary elevations of 34 Eureka Street [above], 36 Eureka Street [bottom left] and 38 Eureka Street [bottom right] (Source: Google)



Proposed line of severance showing the proposed depth of the rear yards at 36 Eureka Street [above] and 38 Eureka Street [below] (Source: Applicant)

**APPENDIX “C”
HERITAGE MARKHAM EXTRACT**

**HERITAGE MARKHAM
EXTRACT**

Date: August 23 2022

To: R. Hutcheson, Manager of Heritage Planning
E. Manning, Senior Heritage Planner
S. Bordone, Manager, Central District

EXTRACT CONTAINING ITEM # 5.7 OF THE SIXTH HERITAGE MARKHAM
COMMITTEE MEETING HELD ON August 23, 2022

**5.7 ZONING BY-LAW AMENDMENT AND CONSENT
APPLICATION TO CREATE A NEW MUNICIPALLY
OWNED PARK**

**34, 36 & 38 EUREKA STREET, UNIONVILLE HERITAGE
CONSERVATION DISTRICT (16.11)**

FILE NUMBERS:

PLAN 22 243326

CSNT 22 252578

CSNT 22 250357

Recommendations:

THAT Heritage Markham has no objection to the demolition of the existing Class ‘C’ dwelling at 34 Eureka Street;

THAT Heritage Markham has no objection from a heritage perspective to the proposed Zoning By-law Amendment and consent applications for the subject lands;

THAT final review of the aforementioned applications, and any other development application required to approve the proposed development, be delegated to Heritage

Section staff should the property configuration and land-use remain consistent with the approach as described in this memo;

AND THAT Heritage Section staff coordinate with Planning and Urban Design Staff as well as the Parks Department when determining the design and programming of the new public park.

Carried

APPENDIX "D"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF B/021/22 and B/020/22

1. Payment of all outstanding realty taxes and local improvements charges owing to date against both the subject and retained parcels, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled;
2. Submission to the Secretary-Treasurer of the required transfers to effect the severances applied for under Files B/021/22 and B/020/22, in duplicate, conveying the subject lands, and issuance by the Secretary Treasurer of the certificate required under subsection 53(42) of the Planning Act;
3. Submission to the Secretary-Treasurer of a reference plan showing the subject lands, which conforms substantially to the application as submitted;
4. Payment of the required Conveyance Fee for the creation of residential lots per City of Markham Fee By-law 211-83, as amended;
5. That new fencing be installed along the property line and a fencing strategy be implemented to minimize tree injury and/or removal. All fencing requirements shall be reviewed and secured as part of City File No. SPC 22 116603;
6. Provide confirmation from an Ontario Land Surveyor that the severed and retained parcels, in their final configuration, meets all the requirements of the applicable Zoning By-law, including any development standards for building and structures, and that the Secretary-Treasurer receive written confirmation that this condition has been satisfied to the satisfaction of the Zoning Supervisor or designate;
7. That the applicant enter into Heritage Easement Agreements with the City of Markham for the retained parcels to further protect the cultural heritage resources;
8. Fulfillment of all of the above conditions within two years of the date that notice of the decision was given under Section 53(17) or 53(24) of the Planning Act, R.S.O. 1990, c.P.13, as amended.

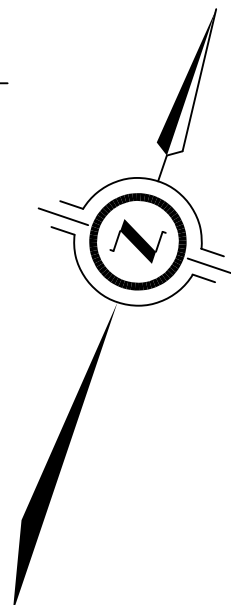
CONDITONS PREPARED BY:



Evan Manning, Senior Heritage Planner

APPENDIX “E”
Drawings

SCHEDULE				
PART	PART OF BLOCK	REGISTERED PLAN	ALL OF PIN	AREA (sq m.)
1	B	2886	02987-0101 (LT)	1429.6
2				1482.2

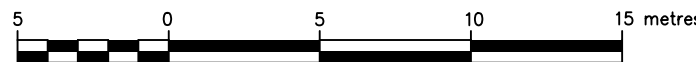


DRAFT PLAN OF PROPOSED LAND SEVERANCE

PART OF BLOCK B
REGISTERED PLAN 2886

CITY OF MARKHAM
REGIONAL MUNICIPALITY OF YORK

SCALE 1 : 250



J.D. BARNES LIMITED

METRIC DISTANCES AND COORDINATES SHOWN ON THIS PLAN ARE IN METRES
AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

NOTES

BEARINGS ARE UTM GRID, DERIVED FROM OBSERVED REFERENCE POINTS A AND B,
BY REAL TIME NETWORK (RTN) OBSERVATIONS, UTM ZONE 17, NAD83 (CSRS)
(2010.0).

DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.999804.

FOR BEARING COMPARISONS,
A ROTATION OF 1'11"20" COUNTER-CLOCKWISE WAS APPLIED TO BEARINGS ON P1.
A ROTATION OF 1'09"40" COUNTER-CLOCKWISE WAS APPLIED TO BEARINGS ON P2.
A ROTATION OF 1'09"00" COUNTER-CLOCKWISE WAS APPLIED TO BEARINGS ON P4.

LEGEND

■	DENOTES	SURVEY MONUMENT FOUND
□	DENOTES	SURVEY MONUMENT SET
■	DENOTES	STANDARD IRON BAR
SSIB	DENOTES	SHORT STANDARD IRON BAR
IB	DENOTES	IRON BAR
PB	DENOTES	PLASTIC BAR
WIT	DENOTES	WITNESS
M	DENOTES	MEASURED
P&S	DENOTES	PLAN AND SET
P	DENOTES	PLAN 65R-38105
P1	DENOTES	PLAN 65R-26694
P3	DENOTES	PLAN 65R-8240
D	DENOTES	INSTRUMENT No. MA64066
H	DENOTES	DAVID HORWOOD LIMITED, O.L.S.
1370	DENOTES	KROMBEIN SURVEYORS LTD. O.L.S.
NI	DENOTES	NOT IDENTIFIABLE
S/T	DENOTES	SUBJECT TO EASEMENT AS IN INSTRUMENT No.
CLF	DENOTES	CHAIN LINK FENCE
BF	DENOTES	BOARD FENCE
PWF	DENOTES	POST AND WIRE FENCE
N/E/S/W	DENOTES	NORTH/EAST/SOUTH/WEST

ALL SET SSIB AND PB MONUMENTS WERE USED DUE TO LACK OF OVERBURDEN
AND/OR PROXIMITY OF UNDERGROUND UTILITIES IN ACCORDANCE WITH
SECTION 11 (4) OF O.REG. 525/91.

SURVEYOR'S CERTIFICATE

I CERTIFY THAT:

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON 202 .

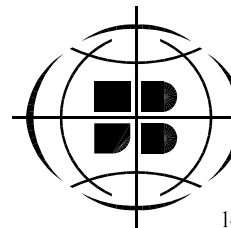
PRELIMINARY

DATE _____

JING YAO

ONTARIO LAND SURVEYOR

THIS PLAN OF SURVEY RELATES TO AOLS PLAN SUBMISSION FORM NUMBER XXXX



LAND INFORMATION SPECIALISTS

140 RENFREW DRIVE, SUITE 100, MARKHAM, ON L3R 6B3

T: (905) 477-3600 F: (905) 477-3882 www.idbarnes.com

SURVEYING
MAPPING
GIS

DRAWN BY:

MK

CHECKED BY:

JY

REFERENCE NO.:

22-21-755-00-0

PLOTTED: 7/20/2022

DATED: JULY 18, 2022

FILE: G:\22-21-755\00\Drawing\22-21-755-00-C.dwg

