

# HARRY W. FIEGUTH

Barrister, Solicitor, Notary Public

Bus: 905-468-8080

Fax: 905-468-8081

Email: [hfieguth@lawyersniagara.com](mailto:hfieguth@lawyersniagara.com)

1881 Concession 4

P.O. Box 601

Virgil, Ontario

L0S 1T0

July 21, 2025

By e-mail: [Natalie.thomson@notl.com](mailto:Natalie.thomson@notl.com)

Town of Niagara-on-the-Lake

Committee of Adjustments

P.O. Box 100

Virgil, ON

L0S 1T0

Attention: Natalie Thomson – Secretary-Treasurer

RE: Application Requesting a Validation Certificate

Property: Parcel 134-1 Section M11; Lot 134 Plan M11; Niagara-on-the-Lake (Vacant Land) (“Lot 134”) being all of PIN 46391-0070

File No: 5037

---

## THE ISSUE:

Plan M11 is not a plan of subdivision within the meaning of the *Planning Act*.

Adjoining Lots 134 and 136 on Plan M11 merged on April 13, 1984, by operation of the *Planning Act*, when Rudolf Kasper, having previously acquired Lot 136 on April 23, 1974, obtained title to Lot 134.

The intent was never to merge these properties and both the current and previous registered owners of these properties only became aware that the properties had merged by operation of the *Planning Act* in the past two months. The registered owners wish to retain their respective ownerships of these two properties.

## THE HISTORY:

On June 7, 1968, Rudolf Kasper purchased, with Consent, a 4.768 acre parcel of land being part of Lot 138, Plan M11 (“Part Lot 138”). On April 23, 1974, Rudolf Kasper purchased the adjoining property, being Lot 136. These properties did not merge as a consequence of Part Lot 138 having been created with Consent. On April 13, 1984, Rudolf Kasper purchased Lot 134, which also adjoins Lot 136, resulting in the inadvertent merger of Lots 134 and 136.

On February 9, 1993, Rudolf Kasper transferred ownership of all three properties (Lot 134, Lot 136 and Part Lot 138) to his spouse, Catherine Jane Kasper. These transfers did not violate the *Planning Act* as common ownership of Lots 134 and 136 remained.

On July 5, 1994, Catherine Jane Kasper transferred ownership of Lot 134 to her son, John Rodney Harris Kasper. Unbeknownst to the parties, this transfer was in violation of the *Planning Act* and consequently invalid. John Rodney Harris Kasper remains the registered owner of Lot 134 to this date, being 30+ years after he became the registered owner.

On July 12, 1994, Catherine Jane Kasper transferred ownership of Part Lot 138 to her daughter, Pamela Riopelle. This transfer was in compliance with the *Planning Act*.

On July 13, 2018, Catherine Jane Kasper purchased part of lot 126 ("Part Lot 126") which adjoins Lot 136. In compliance with the *Planning Act*, a one-time Consent was obtained allowing Part Lot 126 to be merged with Lot 136.

#### **BACKGROUND FACTS:**

Both Part Lot 138 identified as PIN 46391-0066 (LT) and Lot 134 identified as PIN 46391- 0070 (LT) remain vacant land.

Lot 136 and Part Lot 126 identified as PIN 46391-0261 (LT) contains a residential dwelling and ancillary buildings. This property is also subject to a first mortgage in favour of Meridian Credit Union Limited registered as Instrument No. NR677542 on October 21, 2024. This mortgage is invalid as it does not include Lot 134.

No change to the existing legal descriptions of the properties referenced herein is required nor is any change in legal description being requested.

#### **RELIEF REQUESTED:**

My clients are requesting a Validation Certificate pursuant to s. 57 of the *Planning Act* to validate the transfer from Catherine Jane Kasper in favour of John Rodney Harris Kasper, registered July 5, 1994 as Instrument No. LT129990 and the mortgage in favour of Meridian Credit Union Limited registered as Instrument No. NR677542.

#### **VALIDATION CERTIFICATE:**

As the request for a Validation Certificate is an uncommon form of relief, I am providing some additional information to assist the Committee should any of the committee members be unfamiliar with the provision of s. 57 of the *Planning Act* and its operation.

The following information was sourced from Subdivision Control in Ontario, 4<sup>th</sup> Edition, authored by Sidney Troister, a practicing lawyer considered to be the authority when interpreting provisions of the *Planning Act*.

- Validations are not governed by the same rules or procedures as Consents
- A Validation Certificate validates a particular parcel of land and not a specific Instrument, thereby having the effect of retroactively curing any prior contraventions of the *Planning Act* involving that parcel of land
- A Validation Certificate has the effect of validating a prior transfer and/or mortgage
- s. 57 is most often used to validate a prior registered document that breached the *Planning Act* and therefore did not create an interest in land
- Validation applications are typically brought with respect to land that IS AN ALREADY EXISTING AND DEFINED PARCEL OF LAND (as is the case here) to correct an error made arising from a misunderstanding of the application of the *Planning Act*
- A Validation Certificate has no prospective or future benefit – it simply corrects a pre-existing *Planning Act* breach
- It is the Certificate issued by council or the committee that validates the title and therefore there is no document to stamp, no transaction to complete and no document to register
- Practical factors a consenting authority should consider in reviewing a validation application:
  - i) appreciating that the mistake being addressed has already occurred;
  - ii) does validating title constitute a breach of good or reasonable planning; and
  - iii) validations often require a speedy response

#### **ENCLOSURES:**

- a) Part of Plan M11 showing the properties in question;
- b) Instrument No. LT121244 – Transfer to Catherine Jane Kasper from Rudolf Kasper;
- c) Instrument No. LT129990 – Transfer to John Rodney Harris Kasper from Catherine Jane Kasper;
- d) Instrument No. LT130121 – Transfer to Pamela Anne Riopelle from Catherine Jane Kasper;
- e) Property Index Map (Lot 136 and Part Lot 126) being PIN 46391-0261 (LT) – registered owner being Catherine Jane Kasper;
- f) Property Index Map (Lot 134) being PIN 46391-0070(LT) – registered owner being John Rodney Harris Kasper;
- g) Property Index Map (Lot 138) being PIN 46391-0066(LT) – registered owner being Pamela Anne Riopelle;
- h) Parcel Registers 46391-0261 (LT), 46391-0070 (LT) and PIN 46391-0066 (LT) and
- i) Excerpt from Subdivision Control in Ontario, 4<sup>th</sup> Edition pages 369-380.

Should you require any additional information please do not hesitate to contact my office.

Yours very truly,

*Harry W. Fieguth*  
(Computer Generated Signature)

Harry W. Fieguth

Encls.