

November 11, 2024

Guelph Committee of Adjustment
City of Guelph
1 Carden Street
Guelph, ON N1H 3A1

Attention: Trista Di Lullo, Secretary-Treasurer

Dear Ms. Di Lullo and Committee Members:

**Re: 51/53 and 55 Manitoba Street (collectively the “Subject Properties”)
Fee Waiver Request Application
Our File No. 094687-0001**

We are the lawyers for Iolanda Piccoli, being the registered owner (by right of survivorship) of the above-noted properties for this matter (the “Owner”). This application is for a request to waive the Committee of Adjustment’s (the “Committee”) consent application fee (the “Application”) and the ‘Administration Fee’ for lot creation. The Owner intends to submit a consent application for the rectification of an inadvertent merger of the above Subject Properties for the Committee’s consideration at its January 2025 hearing date.

1. Background

The Owner and her late husband, Francesco (Frank) Piccoli (hereinafter “Francesco”) jointly acquired the property, municipally known as 51/53 Manitoba Street in 1966 (the “51 & 53 Manitoba Property”). The property is currently developed with a duplex.

Francesco alone acquired the adjacent property municipally known as 55 Manitoba Street, Guelph, which contains a single detached family home, in 1978 (the “55 Manitoba Property”). Francesco was the sole owner registered on title for the 55 Manitoba Property until 2006. The Subject Properties are legally described in Schedule “A” of this Application.

On or around October 30, 2006, Francesco transferred ownership of the 55 Manitoba Property to joint ownership between Francesco and the Owner for estate planning purposes. At this time, Francesco and the Owner were not advised by their estate planning lawyer of the implications of transferring ownership as noted above and/or their lawyer at the time neglected to undertake an abutting lands search. As such, insufficient measures were taken to avoid the common law merger of the Subject Properties.

As a result, once the Subject Properties were both jointly owned by the Owner and Francesco, the *Planning Act’s* merger provisions were triggered and the Subject Properties merged into a single property. This 2006

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294 East Mill Street, Unit 108, Elora, ON N0B 1S0
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error was only discovered in 2024, after Francesco's death, as part of attempts by the Owner's daughters to assist their mother in conveying these properties.

2. Justification for Waiver of Fee

These properties have always been separated and are currently each developed with residential dwellings. There is no valid planning rationale why they should be merged, and likewise there is no valid planning rationale why they should not be re-split. Until our office raised this issue with the City, the City would have had no idea that this common law merger had occurred, and the properties are still separated on the tax rolls, and in the parcel fabric data the City has access to.

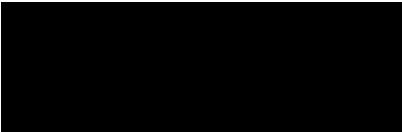
Under the *Land Titles Act*, our client has the ability to apply to the Superior Court for a rectification of title, essentially unwinding the 2006 mistake as if it never happened, but this has elevated costs for both our client and the City (which would be named as the default respondent in any such court application). The easiest way to correct this mistake is to 'sever' the properties through the Committee of Adjustment, but the imposition of the City's standard fees would work and injustice in this case, given that the properties are already separated in fact, but not in law.

The Committee's application fees are intended as a cost recovery mechanism for the staff time needed to review and consider applications, including the planning, engineering, and building implications of 'creating a new lot'. In this case, our client is simply seeking to undue her prior lawyer's mistake, and the City was otherwise unaware this merger had occurred. There simply isn't the need for staff time as there would be with a regular application.

Indeed, the Committee's fee schedule contemplates something called a 'validation certificate', which is where an inadvertent *Planning Act* violation occurs, and an owner seeks a retroactive 'validation', to ensure that future conveyances or mortgages are not deemed void. A validation certificate is the definition of 'asking for forgiveness, not permission'. On the contrary, our client is coming to this Committee in advance and seeking the Committee's blessing to convey 51/53 and 55 Manitoba separately. It does not make sense that asking for permission costs \$4,170 whereas asking for forgiveness costs \$1,200. Even for validation certificates, staff must still conduct a review to ensure that there is no planning or engineering reason why the certificate should not be granted. In our case, our client is simply seeking to preserve the factual status quo, and we suggest that this is a prime candidate for fee waiver.

We look forward to addressing the Committee on this matter and to answering any questions.

Yours Very Truly,
SMITHVALERIOTE LAW FIRM LLP



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SCHEDULE "A"

LEGAL DESCRIPTION OF SUBJECT PROPERTIES

51 & 53 Manitoba Street, Guelph:

PT LOTS 7 & 8, PLAN 223, AS IN MS58739, T/W MS58739, S/T INTEREST IN MS58739, IF ANY;
GUELPH (PIN 71340-0220)

55 Manitoba Street, Guelph:

PT LOTS 7 & 8, PLAN 223, AS IN ROS207162, S/T ROS207162; GUELPH (PIN 71340-0219)