

September 1, 2020

Mrs. Nancy J. Bozzato, Secretary Treasurer
Committee of Adjustment
Town of Pelham
Fonthill, ON L0S 1E0

Re: Consent Application B6-2020P
Northeast corner of Webber Road & Poth Street, Pelham
Concession 13, Part of Lot 8
Roll No. 2732 030 017 10901

The subject parcel, shown as Part 1 on the attached sketch, has 150.43 m of frontage on the east side of Poth Street, lying north of Webber Road, legally described above, in the Town of Pelham.

Application is made for consent to convey 3.98 hectares of land (Part 1) to create a new lot for continued agricultural use and / or residential use. 4.06 hectares of land (Part 2) will be retained for continued vacant use of the light industrial zoned land. At this time, no future use has been proposed on Part 2.

Note: The proposed lot creation is intended to divide the parcel, which currently has split Official Plan designations and split zoning. Minor variance file A24-2020P is being considered concurrently.

Applicable Planning Policies

Planning Act (Consolidated July 2016)

Section 51 (24) states that when considering the division of land, regard shall be had to the health, safety, convenience, accessibility and welfare of the present and future inhabitants of the municipality and among other things to,

- a) The development's effect on provincial matters of interest;
- b) Whether the proposed subdivision is premature or in the public interest;
- c) Whether the plan conforms to the Official Plan and adjacent plans of subdivisions, if any
- d) The suitability of the land for such purposes;
- f) The dimensions and shapes of the proposed lots;
- h) Conservation of natural resources and flood control;
- i) The adequacy of utilities and municipal services;
- j) The adequacy of school sites

Section 53 (1) states a land owner may apply for a consent and the council may, subject to this section, give a consent if satisfied that a plan of subdivision is not necessary for the proper and orderly development of the municipality.

The proposed lot creation seeks to separate the existing lot along its Official Plan designation split and zoning boundary. The approval of the proposed consent does not directly facilitate *intensification* which is sometimes the case depending on the zone. However, because the *Agriculturally* zoned parcel is wholly being left intact, no additional residential dwellings would be permitted beyond the one single detached residence that can

already currently be built. The same is true for the industrial zoned part which is wholly being left intact other than the small section on the east which is needed to avoid encroachment of the 30 m *Provincially Significant Wetland* boundary.

Provincial Policy Statement (PPS) (2020)

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development, and sets the policy foundation for regulating the development and use of land. The PPS provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment.

Section 3 of the *Planning Act* requires that decisions affecting planning matters “shall be consistent with” policy statements issued under the *Act*. The PPS recognizes the diversity of Ontario and that local context is important. Policies are outcome-oriented, and some policies provide flexibility provided that provincial interests are upheld. PPS policies represent minimum standards.

The Provincial Policy Statement (PPS) designates the subject land within the ‘Prime Agricultural Area’ and ‘Rural Area’. The permitted uses (among others) include: agricultural / agricultural related uses, limited residential development and home occupations. ‘Prime Agricultural Areas’ are defined as including associated Canada Land Inventory Class 4-7 lands as well as ‘Prime Agricultural Lands’ (Class 1-3 lands).

Policy 1.1.4.1 states that healthy, viable *rural areas* should be supported by, among other things, promoting regeneration, promoting diversification of the economic base in *prime agricultural areas*, in accordance with policy 2.3 and conserving biodiversity.

The proposed lot creation will separate the southern industrial designated / zoned lands from the northern agricultural lands. This will allow someone whom is only interested in developing the industrial lands to do so without the burden associated with the balance of the agricultural (or residential) lands to the north, and vice-versa.

Policy 1.1.5.8 states new land uses, including the creation of lots, and new or expanding livestock facilities, shall comply with the *minimum distance separation (MDS) formulae*. It is noted that the adjacent property to the east has a barn, which looks capable of housing livestock. Based on aerial imagery, it appears that multiple livestock fencing pens had existed on 425 Webber Road prior to 2013. Although a new lot is being proposed, an MDS I calculation would still have been required prior to building permit issuance for a new residential dwelling on Part 1, given the proximity, in accordance with section 6.14 a) of the Zoning By-law. Similarly, if a new livestock operation is proposed on Part 1, then compliance with section 6.14 b) (MDS II formula) would be required prior to building permit issuance. Approximately 1/3rd of the subject lands (Part 1) is situated outside of the prescribed 300 m MDS setback outlined in section 6.14 a) of the Zoning By-law. For greater certainty, the Committee should be aware that MDS requirements will be a consideration upon applications for building permit (for a residential dwelling and / or new livestock facility).

Growth Plan for the Greater Golden Horseshoe (2019)

This Plan informs decision-making regarding growth management and environmental protection in the Greater Golden Horseshoe (GGH). All decisions made after May 16, 2019 that affect a planning matter will conform

with this Growth Plan, subject to any legislative or regulatory provisions providing otherwise. The policies of this Plan take precedence over the PPS to the extent of any conflict.

The subject parcel is located within a 'Prime Agricultural Area' according to the Growth Plan.

Policy 4.2.2.3 a) states that (among other things), within the *Natural Heritage System* new development or site alteration will demonstrate that there are no negative impacts on key natural heritage features, key hydrologic features or their functions.

Development is defined as the creation of a new lot, a change in land use, or the construction of buildings requiring approval under the *Planning Act*.

The proposed lot line incorporates a southeasterly jog around the *Provincially Significant Wetland* to ensure no fragmentation of any key natural heritage features and to avoid conflicts with various natural heritage policies.

Regional Official Plan (Consolidated August 2014)

The Regional Official Plan designates the subject land as 'Good General Agricultural Area' to the north and 'Rural Area' to the south. The subject land also shares the following environmental designations on at least part of the subject property: Environmental Protection Area (EPA) and Environmental Conservation Area (ECA).

Policy 5.C (Rural Areas) states that the predominant use of these lands will continue to be agriculture, but some non-farm related development will be permitted. Local official plan policies for non-agricultural development shall provide direction on, among other things, the future pattern and character of development, the extent of protection to natural resources and compatibility with adjoining agricultural areas.

Regional staff are satisfied the proposed lots meet the 1.0 hectare size requirement for residential or agricultural uses, avoid fragmentation of key natural heritage features and meet the Regional lot creation criteria.

Pelham Official Plan (2014)

The Town of Pelham Official Plan is the primary planning document that will direct the actions of the Town and shape growth that will support and emphasize Pelham's unique character, diversity, cultural heritage and protect our natural heritage features.

The local Official Plan designates the subject land as 'Good General Agricultural' to the north and 'Industrial' to the south.

Policy B2.1.3.1 restricts lot creation to maintain and protect agricultural resources of the Town.

The proposed severance does not create any new lots within the *Good General Agricultural* designation because Part 1 would remain entirely intact, thereby not inducing any additional residential dwellings or non-agricultural development which is the intent of this policy.

Policy B2.3 (Industrial) – states the purpose of this designation is to provide an area where existing and new rural employment uses can be consolidated to foster employment growth and economic development in the Town via dry industrial uses (no municipal water or sanitary sewers).

Policy B3.2.4.4 (Lot Creation near *Environmental Protection One*) – states that where lot creation is proposed on a parcel comprised of lands designated EP1, the severed lot(s) shall not comprise of land in the EP1 designation. The retained lands shall be retained as a single lot in a natural state and shall be zoned or identified through a Site Plan Agreement to protect ecological functions and natural features.

Any future development on the retained (industrial) lands (Part 2), will be subject to Site Plan Approval and require a Site Plan Agreement with the Town in accordance with the Site Plan Control By-law.

Policy D5.2.1 states that for any consent application, the Committee of Adjustment shall be satisfied that (among other things) the proposed lot:

- a) Fronts on and will be directly accessed by a public road;
 - ✓ Unchanged.
- b) Will not cause a traffic hazard;
 - ✓ Unchanged.
- c) Is in keeping with the intent of relevant provisions and performance standards of the Zoning By-law;
 - ✓ Yes. (See *Recommendation Report* for minor variance file A24-2020P).
- d) Can be serviced with an appropriate water supply and means of sewage disposal;
 - ✓ No issues according to Regional comments.
- e) Will not have a negative impact on the drainage patterns in the area;
 - ✓ Confirmation requested as a condition of approval.
- f) Will not affect the developability of the remainder of the lands, if they are designated for development by this Plan;
 - ✓ Each land designation and zone are proposed to remain intact on their respective parcels.
- g) Will not have a negative impact on the features and functions of any environmentally sensitive feature in the area;
 - ✓ No issue.
- h) Conforms with Regional lot creation policy as articulated in the Regional Official Plan.
 - ✓ No objection from Region.
- i) Complies with the appropriate Provincial Minimum Distance Separation Formulae, where applicable.
 - ✓ Consideration at building permit. Due to existing zoning permissions, the proposed lot creation will not directly induce any additional residences or livestock uses beyond what is currently permitted.

The proposed severance would separate the southern industrial designated lands from the northern agricultural lands. This will allow someone who is only interested in developing the industrial lands to do so without the burden associated with the balance of the agricultural (or residential) lands to the north, and vice-versa.

Pelham Zoning By-law No. 1136 (1987), as amended

The subject land is currently zoned 'Agricultural – 25' (A-25) to the north and 'Light Industrial – 25' (M1-25) to the south according to the Zoning By-law.

Part 2 will continue to comply with the M1 zone requirements after parcel reconfiguration however Part 1 will not comply with section 7.2 ('A' zone) requirements for minimum lot frontage and minimum lot area. Therefore, a concurrent minor variance application (A24-2020P) has been applied for seeking zoning relief to allow the proposed severance.

Any future development on either parts 1 or 2 will continue to need to comply with their respect zoning regulations and permitted uses.

Agency & Public Comments

On August 4, 2020, a notice of public hearing was circulated by the Secretary Treasurer of the Committee of Adjustment to applicable agencies, Town departments, and to all assessed property owners within 60 metres of the property's boundaries.

To date, the following comments have been received:

- Niagara Peninsula Conservation Authority (August 12, 2020)
 - Satisfied the proposed lot line is outside of the 30 m PSW buffer.
 - Any works or site alteration within 15 m of the watercourse, and within 15 m of the stable top of slope will require NPCA approval.
 - Satisfied that there will be no negative impacts to the PSW, valleyland slope or watercourse.
 - No objections to the minor variance and consent applications.
- Niagara Region Planning & Development Services (August 21, 2020)
 - Cannot confirm if the proposed development complies with Minimum Distance Separation (MDS) requirements.
 - Archaeological assessment will be required at Site Plan Control stage for industrial zoned lands (Part 2).
 - Not opposed.
- Building Department (August 19, 2020)
 - No comments.
- Public Works Department (August 19, 2020)
 - See conditions.

No public comments were received at the time of this writing.

Planning Staff Comments

The subject application deals with the severance of an 8.04 hectare property to create a new lot where there exists split Official Plan designations and corresponding zone categories. The proposed lot line does however contain a southeasterly jog near the eastern lot line to avoid encroaching upon a 30 metre *Provincially Significant Wetland* buffer. For general information, the Committee should note that usually, but not always, are official plan land use designations and zone categories derives from existing boundaries and land features such as parcel fabric lines. In this case, the industrial boundary appears to have been aligned more closely with property lines west of Poth Street, but does divide numerous properties including that of the subject land.

A pre-consult was held with the applicant(s) of the property and staff from the Town and Niagara Region Planning & Development Services on June 20, 2019 to discuss the subject applications.

The subject lands are located on the northeast corner of Webber Road and Poth Street and are surrounded by agricultural uses, rural residential dwellings and some dry industrial land to the southwest.

Planning staff visited the site and reviewed aerial photography to better understand the local context. Planning staff have also reviewed the *Planning Justification Brief* prepared by A. Arbour Consulting, submitted with the application.

Planning staff is of the opinion that the proposal applies current planning and development goals regarding the enablement of appropriate economic development on lands suitable to do so (dry industrial) by disposing of land that contains very different policy and land use permissions. Furthermore, the proposed consent avoids harm to any key natural heritage features by ensuring those ecologically sensitive features remain wholly intact by avoiding lot fragmentation. The proposed lot creation also does not induce any more non-agricultural development such as residential dwellings, than what previously exists within the agriculturally designated and zoned lands (Part 1).

It is noted that any future development of the retained lands (Part 2) will be subject to future *Planning Act* approvals such as a Site Plan Control application, at a minimum, due to the use being of an industrial or commercial nature (section 22.1 of Zoning By-law).

In Planning staff's opinion, the application is consistent with the PPS and conforms to Provincial, Regional, and local plans.

Given this analysis, Planning staff recommend that consent file B6-2020P **be approved** subject to the following conditions:

THAT the applicant

- Submit a comprehensive overall Lot Grading & Drainage Plan for both Parts demonstrating that drainage neither relies upon, nor negatively impacts adjacent properties, and that all drainage will be contained within their respective lots, to the satisfaction of the Director of Public Works, or designate.
- Confirm that no existing utilities cross the proposed lot line. In the event that services do cross, the applicant shall be responsible for the costs and responsibility of their relocation and/or removal.
- Provide the Secretary-Treasurer with a registerable legal description of the subject parcel, together with a copy of the deposited reference plan, if applicable, for use in the issuance of the Certificate of Consent.
- Provide the final certification fee of \$395, payable to the Treasurer, Town of Pelham, be submitted to the Secretary-Treasurer. All costs associated with fulfilling conditions of consent shall be borne by the applicant.

Prepared by,



Curtis Thompson, B.URPI

Planner

Approved by,



Barb Wiens, MCIP, RPP
Director of Community Planning & Development