

November 3, 2020

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

Re: Consent Application B10-2020P
1012 Cream Street, Pelham
Concession 10, Part of Lot 12
Roll No. 2732 010 014 18300

The subject parcel, shown as Part 2 on the attached sketch, has 126.24 m of frontage on the southwest corner of Cream Street and Welland Road, legally described above, in the Town of Pelham.

Application is made for consent to partial mortgage discharge and to convey 2.75 hectares of land (Part 2) to merge with the abutting property to the west (Part 3 – 626 Welland Road) for continued residential use. 3.534 hectares of land (Part 1) will be retained for continued use of the agricultural building. At this time, no future use has been proposed on Part 2.

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 boundary adjustment seeks to separate the existing lot along the *urban settlement area* boundary, and split Official Plan designations and zoning boundary. The approval of the proposed consent does not directly facilitate *intensification* or *development* by definition which is sometimes the case depending on the zone regulations. 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.

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’ to the south and within a ‘settlement area’ to the north. ‘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 boundary adjustment will separate the southern agricultural lands from the northern urban lands. This will allow someone who is only interested in developing the urban lands to do so without the burden associated with the balance of the rural lands to the south, and vice-versa.

Greenbelt Plan (2017)

The northern half of the property (Parts 2 – 3) are located within the Village of Fenwick *settlement area* which the *Greenbelt Plan* designates as a ‘Town / Village’. However, the southern half of the property (Part 1) is designated ‘Tender Fruit & Grape Lands’ within the Greenbelt Plan’s *Protected Countryside*.

Similar to the PPS policies, the *Specialty Crop Area* designation is intended to be protected for long-term agricultural use. Lands within the *Towns and Villages* designation are governed by the Growth Plan policies.

Policy 4.6.1 e) states that lot creation is discouraged but minor lot adjustments or boundary additions may be permitted, provided they do not create a separate lot for a residential dwelling in *prime agricultural areas*, including *specialty crop areas*, and there is no increased fragmentation of a *key natural heritage feature* or *key hydrologic feature*.

The proposed boundary adjustment will not create any new lots. The mapped *significant woodland* designation is already fragmented by the existing subject land and the mapped *critical fish habitat* has been determined not to be subject to increased fragmentation with the modified lot line according to the environmental consultant retained by the applicant and supported by Regional staff.

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 southern half (Part 1) is located within a 'Prime Agricultural Area' while the northern half (Parts 2 – 3) are identified as being within a '*settlement area*' according to the Growth Plan. More specifically, Part 2 is a *designated greenfield area* while Part 3 is identified as being within a *delineated built-up area* due to the presence of existing development.

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 conveyance facilitates a boundary adjustment and would not be considered *development*. But also, the reconfigured lot line ensures no increased fragmentation of any *key natural heritage features*.

Regional Official Plan (Consolidated August 2014)

The Regional Official Plan designates Part 1 as 'Unique Agricultural Area' while Part 2 is identified as a 'Designated Greenfield Area' and Part 3 is identified as a 'Built-up Area', the latter two parts both being situated within the 'urban area boundary'. The subject land also shares the following environmental designations on at least part of the subject property: *Environmental Conservation Area (ECA)* and *Fish Habitat*.

Regional staff are satisfied the proposed boundary adjustment conforms with Provincial policies, avoids fragmentation of *key natural heritage features* and meets 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 northern half (Parts 2 – 3) as 'Urban Living Area / Built Boundary', with Part 2 also containing a 'Greenfield Overlay' and subject to special policy B1.1.10 to the north. The southern half (Part 1) is designated 'Specialty Agricultural' and 'Environmental Protection Two' (EP2).

Policy B2.2.5 restricts lot creation to maintain and protect agricultural resources of the Town. However, subsection b) allows for the consideration of applications that facilitate a lot addition, boundary adjustment, mortgage discharge provided such application is minor in nature and will not create a separate lot for a residential dwelling and will not fragment any *key natural heritage* and *key hydrologic features*.

The proposed severance does not create any new lots within the *Specialty 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.

Any future development on Parts 2 – 3 continue to be subject to special policy B1.1.10 which is the requirement for the East Fenwick Secondary Plan policy measures to be in effect prior to approving any new residential lots. Any propose development will continue to be bound by the same requirements in effect only now the zoning setbacks will be more stringent on Part 1 than what previously existed, as is evidenced by the requirement to obtain zoning relief for the new side yard setback of the barn on Part 1.

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.
- 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 according to Technical Memorandum prepared by environmental consultant, Regional, and NPCA staff.
- 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 *prime agricultural* designated lands from the northern urban lands. This will allow someone whom is only interested in developing each respective parcel to do so without the burden associated with the balance of the agricultural (or urban) lands, as the case may be.

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

The subject land is currently zoned 'Residential Village 1' (RV1) to the north (Parts 2 – 3) and 'Agricultural' (A) the south (Part 1) according to the Zoning By-law.

Parts 2 – 3 will continue to comply with the RV1 zone requirements after parcel reconfiguration however Part 1 will not comply with section 7.2 ('A' zone) requirements for minimum lot frontage, minimum lot area, and likely minimum side yard setback to the existing barn. Therefore, zoning relief will be required as a condition of approval.

Any future development on any of the subject lands will continue to need to comply with their respect zoning regulations and permitted uses.

Agency & Public Comments

On October 8, 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 (October 22, 2020)
 - No objections.
- Niagara Region Planning & Development Services (October 28, 2020)
 - Future development and site alterations requiring *Planning Act* applications will require the completion of an *Archaeological Assessment* and *Environmental Impact Study (EIS)*.
 - No objection.
- Building Department (October 26, 2020)
 - No comments.
- Public Works Department (October 26, 2020)
 - See conditions.
- Hydro One (October 8, 2020)
 - No comments.

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

Planning Staff Comments

The subject application deals with the conveyance of 2.78 hectares to merge with the abutting lands to the west (Part 3) as a boundary adjustment that reflects the split Official Plan designations, split zoning and boundary between the *urban settlement area* and *prime agricultural area*. For general information, the Committee should note that usually, but not always, are Official Plan land use designations and zone categories derived from existing boundaries and land features such as parcel fabric lines. In this case, the urban boundary rather arbitrarily dissected dozens of properties along the south side of Welland Road in Fenwick.

A pre-consult meeting was held with the applicant(s) of the property and staff from the Town and Niagara Region Planning & Development Services on December 5, 2019 to discuss the subject applications.

The subject lands are located on the southwest corner of Cream Street and Welland Road and are surrounded by agricultural uses and rural residential dwellings.

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 Upper Canada Consultants, and the *Technical Memorandum* prepared by LCA Environmental Consultants 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 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 further lot fragmentation. The proposed boundary adjustment 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).

In Planning staff's opinion, the application is consistent with the PPS and conforms to Provincial, Regional, and local plans. It is noted that any future residential redevelopment on Parts 2 – 3 will require additional *Planning Act* development applications and approvals.

Given this analysis, Planning staff recommend that consent file B10-2020P **be approved** subject to the following conditions:

THAT the applicant

- Ensure Part 2 merges in title with Part 3.
- Obtain zoning approval on Part 1 for:
 - Section 7.2 (a) 'Minimum Lot Frontage'
 - Section 7.2 (b) 'Minimum Lot Area'; and
 - Section 7.2 (e) 'Minimum Side Yard' to the satisfaction of the Director of Community Planning & Development.
- 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.
- Ensure the Secretary-Treasurer is provided with sufficient evidence indicating that the conveyance of a minimum 0.1 m² parcel of land from Part 3 on the Consent Sketch be deeded to the Town of Pelham. This transfer shall be completed to the satisfaction of the Director of Public Works, in order to facilitate the boundary adjustment proposed in this application, said lands shall be conveyed free and clear of any mortgages, liens or encumbrances. All costs associated with this conveyance are the responsibility of the applicant. 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