

February 2, 2021

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

Re: Consent Application B4-2021P
855 Chantler Road, Pelham
Concession 12, Part of Lot 17
Roll No. 2732 010 018 09400

The subject parcel, shown as Part 1 on the attached sketch, has 108.42 m of frontage on the north side of Chantler Road, lying west of Church Street, legally described above, in the Town of Pelham.

Application is made for consent to convey 6,127.6 m² of land (Part 1) to create a new lot for the existing single detached dwelling being rendered surplus to the agricultural property. 20.3 hectares of land (Part 2) will be retained for continued agricultural use.

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.

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’. 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).

Policies 1.1.5.8 and 2.3.3.3 state that new land uses, including the creation of lots, and new or expanding livestock facilities, shall comply with the *minimum distance separation (MDS) formulae*.

Town Planning staff note that a property situated over 300 m to the southeast, (#820 Chantler Road), appears to support horse paddocks and a small equestrian facility based on aerial imagery. Although a new lot is being proposed, no new sensitive land uses such as a residential dwelling would be introduced as a result from this severance being approval due to a required site-specific zoning on the retained farm parcel (Part 2) that would need to prohibit further residential development.

This surplus farm dwelling consent application cannot adversely affect anything associated with the existing livestock operation to the southeast, or any proposed livestock facility on a neighbouring parcel, any more than the number of scattered rural residential dwellings found in the neighbourhood. The current proximity between the existing dwelling on Part 1 and the existing livestock facility to the southeast represents an existing situation.

However, the only conceivable frustration to a proposed future livestock venture would be from the new property ownership separation between that of the subject lands and Part 2. It is clear that the applicant’s agricultural business does not rely on livestock, although it is always possible for this property to change ownership sometime in the future. Regardless, the ability for Part 1 to prevent any future livestock operation on Part 2 under an MDS II formulae requirement would be marginal. This is because there are several existing dwellings surrounding the property’s frontage, and all of which would pose nearly the same challenges to a new livestock proponent (on Part 2) than that of a separated house on Part 1. Furthermore, the retain parcel is still very large with a deep lot depth, so, we suppose some inherent flexibility to accommodate this type of agricultural business in the future may still be feasible with this consent approval.

Policy 2.3.1 states that *prime agricultural areas* shall be protected for long-term agricultural use.

Policy 2.3.4.1 c) states that lot creation in *prime agricultural areas* is discouraged and may only be permitted for a residence surplus to a farming operation as a result of farm consolidation. Provided that, the new lot is limited to the size necessary to accommodate private water and sewage services and that new residential dwellings are prohibited on the remnant parcel of farmland created by the severance.

The applicant has indicated the rationale for the somewhat larger parcel size proposed for Part 1. Similar to the existing single detached dwelling, the existing barns and silos are considered surplus to the consolidating farmer’s business needs as their equipment is stored nearby. These barns are anticipated to remain, they conveniently located near the dwelling and will offer utility for the future residents of the dwelling. The balance

of the lands offers adequate land area for a reserve private sewage system should the existing system fail in the future. Town Planning staff would prefer the existing barns to have been situated on the retained farm parcel despite the applicant's lack of interest in their use. As part of planning for the future, the possibility would exist for a different land owner with a modified nature of business to yield some benefit from those structures, or simply from the land they occupy. However, in the application's defense, Part 1 likely would not have been able to comply with the minimum 0.4 ha (1 acre) lot area requirement necessary to conform as those barns occupy about 1/3rd of the subject lands. Therefore, removing productive agricultural land to the north or east would have been the preferred alternative.

Planning staff are of the opinion the proposed severance is consistent with the PPS and that the lot geometry successfully helps prevent the unnecessary removal of *prime agricultural land*.

Regional Official Plan (Consolidated August 2014)

The Regional Official Plan designates the subject land as 'Good General Agricultural Area'. The predominant use of land will be for agricultural of all types.

Policy 5.B.8.1 c) states consents to convey may be permitted for a residence surplus to a farming operation as a result of a farm consolidation provided new residential dwellings are perpetually prohibited on any vacant remnant parcel of land created by the severance. As a condition of severance the applicant must rezone the remnant farm parcel to preclude its use for residential purposes.

Policy 5.B.9 states that proposed residential lots being considered for a consent under Policy 5.B.8.1 criteria must also meet (among others) the following conditions:

- a) Any new lot is of sufficient size and has suitable soil and site conditions for the installation and long-term operation of a private sewage disposal system in compliance with Provincial requirements.
- b) Any new lot has an adequate ground water supply in compliance with Provincial requirements.
- c) Any new lot has sufficient frontage on an existing public-maintained road.
- f) The size of any new lot shall not exceed an area of 0.4 hectares (1 acre) except to the extent of any additional area deemed necessary to support a well and private sewage disposal system as determined by Provincial requirements.
- g) The proposed lot should be located to minimize the impact on the remaining farm operation.

The proposed lot is 0.61 ha in size and contains one existing dwelling that is considered surplus to the applicant's farming needs purported in their application and the *Planning Justification Brief*. Specifically, the existing dwelling poses a financial burden to the applicant as it significantly raises the cost of property carrying costs, (i.e. debt servicing, property tax etc.).

Policy 10.C.2.1.13 states that *development* and *site alteration* shall only be permitted on lands containing *archaeological resources* or *areas of archaeological potential* if the significant *archaeological resources* have been *conserved* by removal and documentation, or by preservation on site.

Development, by definition, includes lot creation according to the PPS. Although the subject lands exhibits high potential for deeply buried archaeological resources according to the Town's Heritage Master Plan, Town Planning staff are comfortable waiving this fairly typical requirement. Under normal circumstances of lot creation, development is normally induced automatically, as a result of the default zoning provisions. For

instance, the default 'Agricultural' zone stipulates one single detached dwelling is permitted, per lot. However, in this case, because an *agricultural purposes only* zoning is required as a condition of severance approval, (to prohibit further residential construction), no deep excavation from building or servicing would result from the lot's creation, beyond that which is already currently permitted today.

Regional staff provided comments which are attached and offered no objections pending the remnant lands be rezoned to preclude further residential construction, and the Town is satisfied with any cultural heritage and MDS requirements.

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' according to Schedule 'A'.

Policy B2.1.3.1 restricts lot creation in the *Good General Agricultural* area in an effort to maintain and protect agricultural resources of the Town, and by directing new residential growth to *urban settlement areas*. However, this policy does allow for the creation of one new lot if it is necessary to accommodate a surplus dwelling resulting from a farm consolidation in accordance with policy B2.1.3.3.

Policy B2.1.3.3 states applications to sever a surplus farm dwelling should provide for a maximum lot area of 0.4 ha. A larger lot size will be considered if an additional area is necessary to accommodate a private water and sewage disposal system. Furthermore, the consolidated farm parcel shall be zoned to preclude future residential use forever.

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;
 - ✓ Site-specific Zoning By-law Amendment is required as a condition of approval to preclude further residential construction on Part 2 as well as to address any outstanding provisions with respect to building setbacks and / or lot coverage requirements.
- 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;
 - ✓ No issues according to Town Engineering staff.
- f) Will not affect the developability of the remainder of the lands, if they are designated for development by this Plan;
 - ✓ The future agricultural based development uses of the retained lands will marginally be impacted by new zoning setback regulations resulting from Part 1's creation due to the overall large lot size of Part 2. The prospect for adverse development impacts associated with new

livestock facilities appear to be acutely remote due to the volume and proximity of existing neighbouring dwellings and the existing large lot size of Part 2, which provides flexibility in possible development locations outside of any prescribed MDS radii.

- g) Will not have a negative impact on the features and functions of any environmentally sensitive feature in the area;
 - ✓ No issue as the proposed lot is outside of the prescribed distances for environmental evaluative policy measures of *key natural heritage features*.
- h) Conforms with Regional lot creation policy as articulated in the Regional Official Plan.
 - ✓ No objection from Region pending the satisfaction of any local requirements.
- i) Complies with the appropriate Provincial Minimum Distance Separation Formulae, where applicable.
 - ✓ Refer to Provincial Policy Statement analysis.

The proposed severance would allow for the disposal (selling off) of an existing residential dwelling that the applicant considers surplus to their farming needs. According to the application and *Planning Justification Brief*, this existing dwelling poses a financial burden to the applicant as it significantly raises the cost of property ownership carrying costs, (i.e. debt servicing, property tax etc.). The existing agricultural structures are also not needed due to their nature of business (cash cropping) and storage of farm equipment nearby.

Despite the oversized residential surplus dwelling parcel exceeding the 0.4 ha policy requirement, it appears there is merit in allowing this geometry to be conveyed from the farm land. According to the applicant, the barns do not serve a benefit to their business needs, they will provide some utility for the existing residential dwelling, and the balance of the open space dedicated to the dwelling provides adequate reserve area for a replacement septic system and is not being cultivated.

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

The subject lands are currently zoned 'Agricultural' (A) according to Schedule 'A0' of the Zoning By-law.

Part 2 will comply with the section 7.2 ('A' zone) requirement for minimum lot area but not minimum lot frontage, if Part 1 were conveyed.

Based on the Consent Sketch submitted at the time the application was circulated, all of the existing agricultural structures are proposed to remain on the severed residential lands (Part 1). The applicant later indicated to staff that some of these structures will be demolished. Depending on whether all or some of these structures are to remain as residential accessory structures, zoning relief may be required to allow for their existing height and lot coverage.

A site-specific Zoning By-law Amendment is required as a condition of approval to prohibit further residential construction on Part 2 and it will need to address any zoning deficiencies that result from the severance. The condition requested by staff does speak to the option for all or partial demolition of these existing barns, should that be pursued.

Agency & Public Comments

On January 8, 2021, 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 (May 28, 2020)
 - No concerns.
- Niagara Region Planning & Development Services (January 20, 2021)
 - See attached.
 - Remnant parcel (Part 2) shall be rezoned to an *Agricultural Purposes Only* zone to prohibit further residential construction.
 - Defers to Town re: Minimum Distance Separation (MDS) and archaeological assessment requirements.
 - No objections.
- Building Department (January 20, 2021)
 - No comments.
- Public Works Department (January 20, 2021)
 - No comments.

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

Planning Staff Comments

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 4, 2020 to discuss the subject applications.

The subject lands are located on the north side of Chantler Road, lying west of Church Street and are surrounded by agricultural uses and rural residential dwellings.

Planning staff reviewed aerial photography to better understand the surrounding context. Planning staff have also reviewed the *Planning Justification Brief* prepared by Craig Larmour (dated Dec 2020), submitted with the application.

The applicant (River Bend Farms) operates a long standing, registered farming business growing corn, soybeans and wheat crops. Approximately 370 hectares are owned by the applicant with another ± 565 hectares being rented throughout the Township of Wainfleet and Town of Pelham. The personal residence of the applicant is within the Town of Pelham and their farming equipment is located nearby.

As part of the applicant's submission, they provided a written submission outlining the difficulties associated with purchasing affordable farm land in Pelham. Town Planning staff agree in that the consequences of many decades of creating rural residential lots / retirement lots have especially negatively impacted the agricultural industry and land base as significant amounts of viable farm land have now been taken out of production. Notwithstanding the challenges farmers continue to face when more residential neighbours move in, the cost

of purchasing whatever farm land is available can be astronomical when a single residential dwelling is present on the lands. These dwellings often account for the overwhelming market value of the land, and pose significant barriers for purchasing farmers to not only obtain financing, but continue to carry the costs associated with such an expensive property. By allowing the farmer to convey a new lot with the existing dwelling and to sell off, this can improve the viability of their farm operation by reducing their debt servicing ratio, property tax and insurance, among other things.

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 (*prime agricultural area*) by disposing of land that pose a burden to the farm operation and are considered surplus to the farm's viability. 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, pursuant to a required condition of zoning approval on Part 2.

It is noted that any future livestock development on the retained lands (Part 2) will be required to comply with the current MDS II setback requirements, (section 6.14 (b) of the 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 B4-2021P **be approved** subject to the following conditions:

THAT the applicant

- Obtain approval for a site-specific Zoning By-law Amendment to rezone Part 2 for *agricultural purposes only*, prohibiting further residential construction, as well as to address any non-compliant provisions resulting from the lot's creation. Including but limited to, minimum lot frontage, maximum building height, maximum lot coverage, and minimum setbacks.
 - If all or some of the existing barns will be subject to demolition in order to help achieve zoning compliance on Part 1, the demolition of these structures shall be to the satisfaction of the Chief Building Official.
- 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 \$399, 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