

July 28, 2021

Ms. Holly Willford, Secretary Treasurer  
Committee of Adjustment  
Town of Pelham  
Fonthill, ON L0S 1E0

**Re: Consent Application B21-2021P**  
**588 Chantler Road, Pelham**  
Part of Lot 11, Concession 13  
**Roll No. 2732 030 017 12400**

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The subject parcel, shown as Part 1 on the attached sketch, has a frontage of 60.57 m on the south side of Chantler Road, lying east of Cream Street, being Part of Lot 11, Concession 13 in the Town of Pelham.

Application is made for consent to partial discharge of mortgage and consent to convey 16,941 m<sup>2</sup> of land (Part 1) as surplus farm dwelling for residential use. 36.6 hectares of land (Part 2) is to 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.

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### 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*.

The applicant’s agricultural business does not rely on livestock operation as it is solely focused on cash crop production, there is also no adjacent existing livestock operation as reviewed by Planning Staff. 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 approval due to a required site-specific zoning on the retained farm parcel (Part 2) which would prohibit any further residential development.

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 stated the rationale for the significantly larger parcel size proposed for Part 1

in the cover letter and *Planning Justification Brief*. 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 accessory structures are anticipated to remain, and are conveniently located near the dwelling and will offer utility for the future residents of the dwelling. West of the driveway lies a large open space area which was the main subject of discussion between the applicant and planning staff, as this large, unfarmed area is proposed to remain with the proposed lot, and which is the main contributor to the severely oversized lot configuration. As stated by the applicant, this open space area is not applicable for their farming needs and specifically the lot geometry and on-site environmentally significant features create an obstacle for them to properly utilize the land and therefore, propose that the area be remained with the newly created lot.

#### 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.

The subject lands are impacted by the Region's Core Natural Heritage System (CNHS), consisting of the Upper Coyle Creek Provincially Significant Wetland Complex (PSW), Significant Woodland, Significant Valleyland, and Type 2 Fish Habitat.

Policy 7.B.1.11 and 7.B.1.15 generally require an Environmental Impact Study (EIS) in support of site alteration and/or development proposed within 120 metres of a PSW, 50 metres of a Significant Woodland/Significant Valleyland and 15 metres of a Type 2 Fish Habitat.

As the new lot creation is at the periphery of the noted setbacks, ROP policy 7.B.1.29 provides an exemption for an EIS if a proposed single residential lot is to be located entirely within lands adjacent to the CNHS. The requirement for an EIS was subsequently waived as Regional Staff are satisfied that standard mitigation measures can avoid negative impacts on the features and ecological functions of the CNHS.

Policy 5.B.2 of the ROP provides that, the second highest priority will be given to preserving "good general agricultural lands".

Policy 5.B.8.1 sets out the policies for consents in Good General Agricultural Areas, provided that consents to convey may be permitted only in circumstances set out in the provisions. And which, provision c) states that 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 1.69 ha in size and contains one vacant dwelling, three accessory buildings and a silo, and will be serviced by the existing sewage system. As per site inspection, no defects were noted and the lot is of sufficient size to support the replacement of tile bed if needed. Therefore, Regional Private Sewage System staff have no objections to the application as submitted.

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 composite potential for deeply buried archaeological resources according to the Town's Heritage Master Plan, Town Planning staff are of the opinion that this requirement can be waived due to this application's unique condition. 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 what has already been disturbed. The requirement for archaeological assessment is therefore relieved.

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 archeological assessment(s) and MDS requirements.

The proposed severance conforms to both consent and environmental policies as set out by the Regional Official Plan.

#### 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 B2.1.1 states that the purpose of the Good General Agricultural designation is to protect and maintain land suitable for agricultural production and permit uses which support and/or are compatible with agriculture.

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* or existing vacant building lots. However, this policy does allow for the creation of new lots in certain circumstances, specifically provision b), which states the lot is necessary to accommodate a surplus dwelling resulting from a farm consolidation in accordance with Policy B2.1.3.3. 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 provides consideration of consents related to farm consolidations which states that it is acknowledged that the consolidation of farms into larger and more efficient operations is a reality in the Regional and Provincial agricultural economy. In this regard, the consolidation of two or more abutting or adjacent farm parcels or a boundary adjustment that increases the size of a farm parcel is permitted provided no new lot is created and provided the benefitting parcel captures the majority of arable farmland.

Existing farm dwellings rendered surplus as a result of a farm consolidation may be severed, regardless if the farm parcels subject to the consolidation are abutting or independent. Applications to sever a surplus farm dwelling should provide for a maximum lot area of 0.4 hectares. A larger lot size will be considered if an additional area is necessary to accommodate a private water and sewage disposal system. In addition it shall be a requirement that the residual or consolidated farm parcel be zoned to preclude future residential use in perpetuity.

Section D.5 of the Official Plan contains policies that are to be considered with every application

to subdivide land in the Town. General Criteria for the creation of new lots by consent is outlined in policy D5.2.1.

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;
  - ✓ Yes.
- 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 ensure that new residential dwellings are prohibited on Part 2 in perpetuity, as well as to address any zone deficiencies as a result of the new lot creation.
- 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;
  - ✓ A comprehensive overall lot grading plan is required as a condition of approval which demonstrates that the drainage does not negatively impact nor rely on neighbouring properties.
- f) Will not affect the developability of the remainder of the lands, if they are designated for development by this Plan;
  - ✓ The remainder of lands shall be redesignated as 'Agricultural Purposes Only' to preclude future residential development to prevent the loss of prime agricultural farmland. The developability should not be impacted by the new lot creation due to its larger lot size and frontage onto Chantler Road.
- g) Will not have a negative impact on the features and functions of any environmentally sensitive feature in the area;
  - ✓ No issues according to Regional and NPCA comments.
- 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.
  - ✓ Not applicable.

The proposed severance would allow for the disposal (selling off) of an existing residential dwelling and surrounding accessory buildings that the applicant considers surplus to their farming needs. According to the application and *Planning Justification Brief*, maintaining the vacant dwelling and the accessory buildings is not feasible for their operation and that they are simply not needed due to their nature of farming business (cash cropping) and having farm

equipment storage nearby.

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

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

Based on the Consent Sketch submitted at the time the application was circulated, both the severed and retained lots should comply with the lot frontage and area requirements of the Agricultural Zone. All of the existing accessory buildings are proposed to remain on the severed residential lands (Part 1). According to the sketch, the accessory buildings combined have a total lot coverage of 1.58 %, which exceeds the regulation set out by section 7.7 (a) maximum lot coverage which requires 1 %. The height of the accessory buildings which go as high as 5.8 m also exceeds the related regulation set out by section 7.7 (d) Maximum Building Height which requires 3.7 m.

As required by provincial, regional and local policies, 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 also need to address any zoning deficiencies that result from the new lot creation, specifically lot coverage and height of the accessory buildings. This requirement is therefore requested by staff as a condition of approval.

### **Agency & Public Comments**

On June 29, 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:

- Bell Canada (July 12, 2021)
  - No concerns or comments.
- Niagara Peninsula Conservation Authority (July 21, 2020)
  - No objections.
- Niagara Region Planning & Development Services (July 21, 2021)
  - See attached.
  - No objections to the proposed consent application from a Provincial or Regional perspective, subject to the following conditions:
    - That retained parcel (Part 2) be rezoned for '*Agricultural Purposes Only*' to preclude construction of a dwelling in perpetuity.

- The satisfaction of any local requirements, including archeological assessment(s) and MDS setbacks.
- Building Department (July 20, 2021)
  - No comments.
- Public Works Department (July 8, 2021)
  - That the Applicant obtain a Driveway Access and Culvert Permit from the Town to construct a new access to serve Part 2. Installation and/or modification of new entrances shall be completed in accordance with Town Standards prior to consent and the Applicant shall bear all costs associated with the works.
  - That the Applicant submit a comprehensive overall lot grading plan, to demonstrate that the drainage does not negatively impact nor rely on neighbouring properties, to the satisfaction of the Director of Public Works.
  - That the Applicant confirm no existing utilities cross the proposed new property line. Should any services cross this new property line, the Applicant will be responsible for the cost associated with their relocations and/or removal.

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

### Planning Staff Comments

A pre-consultation was held with the applicant(s) of the property and staff from the Town and Niagara Region Planning & Development Services on April 1, 2021 to discuss the subject applications. Planning staff have reviewed aerial photography to better understand the subject land's surrounding context as well as the planning rationale provided in *Planning Justification Brief* prepared by Craig Larmour which was submitted with the application. Regional and Town staff have also conducted a site visit on June 23, 2021 to meet with the applicant to better understand existing site conditions and the applicant's farming operation, with the intention of understanding and evaluating the hardship for the applicant in maintaining a much smaller footprint for the severed lot in order to meet provincial, regional and local policy requirements.

The subject lands are located on the south side of Chantler Road, lying east of Cream Street and are surrounded by agricultural uses and rural residential dwellings.

The applicant (River Bend Farms) operates a long standing, registered farming business growing cash crops such as corn, soybeans and wheat crops. The applicant owns approximately 409.7 hectares of land with another  $\pm$  526 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.

Despite the significantly oversized residential surplus dwelling parcel which exceeds the 0.4 ha

policy requirement, it appears that there is merit in allowing this new lot creation. According to the applicant, the accessory buildings and silo do not add value to their agricultural use and needs, instead they will serve some utility for the existing residential dwelling. The applicant also stated that the lot configuration and subsequent accessibility issues make it difficult to meet the maximum lot size requirement.

Applicant indicated that the large open space west of the driveway (which make up a large portion of the proposed lot) is not being cultivated as it is considered surplus to their current farming practice. Planning staff have suggested and discussed with the applicant regarding the possibility to exclude the inclusion of that area to minimize the proposed lot size at the pre-consultation and subsequent meetings, however, it becomes clear that the specific area's unique lot geometry and the existing provincially significant natural heritage features pose significant challenges which impede the applicant's ability to properly utilize the land.

Historically, the maintenance of that open space area was shared between the applicant and the neighbouring homeowner at 596 Chantler Road, and ever since the passing of the neighbouring owner, the land has since been neglected and no longer being maintained for. The open space area is quite narrowly shaped and because of the limited space, large farming equipment which is essential to the applicant's farming operation would not be able to safely turn around when farming. Another major concern raised by the applicant is its limited accessibility which caused the applicant in ruling out the exclusion of it in the proposed lot. In order to access and farm the open space area, the farming equipment will have to enter from the south side of the land, and which the entry point is currently occupied by a drainage ditch which contains several environmentally significant features which were outlined in previous policy analysis section, as well as a vegetated buffer that is mostly consist of bushes and shrubs and a large, mature maple tree. These existing features provide a natural buffer between the applicant's agricultural practice and the neighbouring property and can help serve some vital environmental functions to the parcel. Furthermore, the open space dedicated to the dwelling can provide adequate reserve area for a replacement septic system should the existing septic system fails.

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 would not induce any more non-agricultural development such as residential dwellings, pursuant to a required condition of zoning approval on Part 2 and the parcel fabric would not be out of character in considering surrounding neighbourhood context.

In Planning staff's opinion, the severance would not warrant the unnecessary removal of *prime agricultural land* and the application is consistent with the PPS and conforms to Provincial, Regional, and local plans and policies.

Given this analysis, Planning staff recommend that consent file B21-2021P **be approved** subject to the following conditions:

**THAT** the applicant

- Obtain final approval for a site-specific Zoning By-law Amendment to rezone Part 2 as Agricultural Purposes Only (APO), to ensure that new residential dwellings are prohibited on Part 2 in perpetuity, to the satisfaction of the Director of Community Planning and Development.
- Address any necessary zone deficiencies resulting from the lot's creation through the Zoning By-law Amendment to the satisfaction of the Director of Community Planning and Development.
- Obtain a Driveway Access and Culvert Permit from the Town to construct a new access to serve Part 2. Installation and/or modification of new entrances shall be completed in accordance with Town Standards prior to consent and the Applicant shall bear all costs associated with the works.
- Submit a comprehensive overall lot grading plan, to demonstrate that the drainage does not negatively impact nor rely on neighbouring properties, to the satisfaction of the Director of Public Works.
- Confirm no existing utilities cross the proposed new property line. Should any services cross this new property line, the Applicant will be responsible for the cost associated with their relocations 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 \$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,



Kenny Ng, B.ES  
Planner

Approved by,



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