



**Community Planning and Development Department  
Committee of Adjustment**  
Monday, April 03, 2023

**Consent Application: B4-2023P**

**Municipal Address: None Assigned**

**Legal Description: Part Lot 12, Concession 14 (Property directly north of 606 River Road), Pelham (Part 1 Sketch)**

**Roll number: 2732 010 018 12900**

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**Location of Lands and Purpose of Application:**

The subject parcel, shown as Part 1 on the attached sketch, has a frontage of 6.1m on the north side of River Road, lying west of Cream Street, being Part Lot 12, Concession 14 in the Town of Pelham.

Part 1 contains an existing natural gas well and pipeline running from the residence on Part 3 (known as 606 River Road), across River Road, to Part 2. Application is made for consent to convey an 822 m<sup>2</sup> easement in perpetuity over Part 1, to the benefit of Part 3 (606 River Road) for continued use of an existing gas well. Parts 1 and 2 are to be retained for continued agricultural use.

The easement is requested to maintain the use of the gas well and pipeline in the event the Owner sells Parts 1 and 2.

**Applicable Planning Policies:**

Planning Act (Consolidated April 2022)

Section 53 (1) states a landowner 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 Committee of Adjustment has delegated authority to approve consents.

Section 51(24) of the Planning Act sets out various criteria to be considered by an approval authority before granting consent to convey an interest in land.

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.

The PPS designates the subject lands as Prime Agricultural Land. Section 2.1 of the PPS states that natural features and areas shall be protected for the long term.

Section 2.3.4.1 of the Provincial Policy Statement (PPS) deals with Lot Creation and Lot Adjustments, specifically for legal or technical reasons (see attached). Section 2.3.4.2 states: Lot adjustments in prime agricultural areas may be permitted for legal or technical reasons. Legal or technical reasons are defined as severances for purposes such as easements, corrections of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot. The application has the effect of creating an easement for continued use of an existing gas well and pipeline. No new lot is proposed to be created. As such, the easement is considered an application for a legal or technical reason.

Section 2.6 of the PPS requires the conservation of archaeological resources. An archaeological assessment would be required to ensure that any potential archaeological resources have been conserved. As no site alteration is proposed as part of the application, planning staff will waive the requirement for an archeological assessment.

Planning staff are of the opinion the proposed severance is consistent with the PPS.

#### Greenbelt Plan (2017)

The lands are outside of the Greenbelt Plan area, and accordingly the policies of the Greenbelt Plan do not apply.

#### Growth Plan for the Greater Golden Horseshoe (2020)

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 to 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 Growth Plan contains various guiding principles which are intended to guide decisions of how land is developed. The guiding principles include building compact, vibrant, and complete communities, managing and encouraging development in appropriate locations and optimizing the use of existing infrastructure.

The lands are within the Prime Agricultural Area in the Provincial Agricultural System under the A Place to Grow: Growth Plan for the Greater Golden Horseshoe. Prime agricultural areas, including speciality crop areas are intended to be protected for long term agricultural use.

Planning staff are of the opinion the proposed consent conforms with the Growth Plan.

#### Niagara Region Official Plan (2022)

The property is designated as Prime Agricultural Area per Region of Niagara Official Plan Schedule 'F,' Agricultural Land Base. Agriculture, agriculture-related uses, on-farm diversified uses, single dwellings, existing uses, and accessory structures are permitted. Minor lot adjustments or boundary adjustments are permitted, including easements.

As such, Planning staff are of the opinion the proposed consent conforms to the Regional Official Plan.

#### Town of 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 OP designates the lands as Good General Agricultural per Schedule 'A.' Lands designated Good General Agricultural are those that are identified as being within a prime agricultural area as identified by the Niagara Region Policy Plan. 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. The principal use of land in the Good General Agricultural designation shall be agriculture. Single detached dwellings are also a permitted use. All uses in the Good General Agricultural designation shall be designed, located, and managed to not detract from the primary role of the agricultural area as set out in Policy B2.1.1 of the Official Plan.

The Town's Official Plan policies related to consents do not explicitly speak to the granting of easements. However, the PPS states lot adjustments in prime agricultural areas may be permitted for legal or technical reasons. The subject application can be considered for "legal purposes" as the purpose of the application is to establish an easement for an existing gas well and pipeline.

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 that is maintained on a year round basis;
  - ✓ Unchanged. Access will remain from River Road.
- b) Will not cause a traffic hazard as a result of its location on a curve or a hill;
  - ✓ Unchanged.

- c) Is in keeping with the intent of relevant provisions and performance standards of the Zoning By-law;
  - ✓ Unchanged.
- d) Can be serviced with an appropriate water supply and means of sewage disposal;
  - ✓ Yes, Part 3 will be serviced by private water and septic systems.
- e) Will not have a negative impact on the drainage patterns in the area;
  - ✓ Unchanged.
- f) Will not affect the develop ability 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 core natural heritage features are identified on Parts 1 and 2.
- h) Conforms with Regional lot creation policy as articulated in the Regional Policy Plan; and,
  - ✓ Yes.
- i) Complies with the appropriate provincial Minimum Distance Separation Formulae, where applicable.
  - ✓ N/A

Planning staff are of the opinion the proposed application conforms with the Town of Pelham Official Plan.

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

Parts 1 and 2 are zoned Agricultural (A) in accordance with Pelham Zoning By-law 1136 (1987), as amended. No new zoning permissions are necessary to facilitate the application.

**Agency and Public Comments:**

On March 3, 2023, 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:

- Building Division
  - No comments.
- Public Works Department
  - Updated legal survey indicating location of registered easement. Please note that this easement should be registered.
- Ministry of Natural Resources and Forestry
  - The MNR has indicated that they have no concerns with the application so long as the well operator has access rights to operate the gas well.

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

### **Planning Staff Comments:**

A pre-consultation meeting was held with the applicant of the property and staff from the Town and Niagara Region Planning and Development Services staff on December 1, 2022, to discuss the subject application. In addition, a consent sketch and cover letter were provided in support of the proposed development.

The proposed easement over Part 1 for the benefit of 3 is for the continued use and maintenance of a gas well and gas line. The dwelling on Part 3 is serviced by the gas well and gas line on Part 1. The proposed easement will provide the long-term protection of access to the gas well and gas line for Part 3 if Part 1 and 2 are ever sold. The proposed easement is logical and represents good land use planning.

Entering into an encroachment agreement for the easement over River Road for the private gas line is a recommended condition of consent. The Town has no record of an encroachment agreement for the existing gas line under the roadway. The encroachment agreement protects the owner and will give the owner and future owners of the property the legal right to have and access the private gas line on the public road property in perpetuity and will also ensure that when the Town does any work in the roadway, it is aware of the presence of a private gas line in this location.

### **Planning Staff Recommendation:**

Planning staff recommend that consent file B4/2023P **be approved** subject to the following condition(s):

**THAT** the applicant:

- That the Owner enter into an encroachment agreement with Town for the gas line over River Road.
- The registered reference plan includes the identification of the Part of the gas line under the public roadway.
- That the Secretary-Treasurer be provided with a registrable 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.
- That the final certification fee of \$423, 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 and Submitted by:**

Andrew Edwards, BES  
Planner

### **Recommended by:**

Barbara Wiens, MCIP, RPP  
Director of Community Planning and Development Department