

REGULAR COUNCIL AGENDA

C-07/2023

Wednesday, April 5, 2023

9:00 AM

Meridian Community Centre - Accursi A and B

100 Meridian Way

Fonthill, ON

L0S 1E6

The Town of Pelham is holding hybrid meetings of Council and Committee in accordance with Procedure By-law 4507(2022). Public access to meetings will be provided in-person at the location indicated on the agenda, via Livestream: www.youtube.com/townofpelham/live and subsequent publication to the Town's website at www.pelham.ca.

Pages

1. Call to Order and Declaration of Quorum

2. Land Recognition Statement

We begin this meeting by acknowledging the land on which we gather is the traditional territory of the Haudenosaunee and Anishinaabe peoples, many of whom continue to live and work here today. This territory is covered by the Upper Canada Treaties and is within the land protected by the Dish With One Spoon Wampum agreement. Today this gathering place is home to many First Nations, Metis, and Inuit peoples and acknowledging reminds us that our great standard of living is directly related to the resources and friendship of Indigenous people.

3. Approval of the Agenda

4.	Disclosure of Pecuniary Interests and General Nature Thereof	
5.	Hearing of Presentation, Delegations, Regional Report	
5.1	Delegations	
5.1.1	Wayne Liebau - 2024 Eclipse	5 - 18
5.2	Presentations	
5.2.1	Draft Town of Pelham 2023-2027 Strategic Plan David Cribbs, Chief Administrative Officer	19 - 42
5.2.2	2023-2027 Strategic Plan Action Item Reporting Metrics David Cribbs, Chief Administrative Officer	43 - 49
6.	Adoption of Council Minutes	
6.1	C-06/2023 - Regular Council Meeting - March 22, 2023	50 - 59
7.	Request(s) to Lift Consent Agenda Item(s) for Separate Consideration	
8.	Consent Agenda Items to be Considered in Block	
8.1	Presentation of Recommendations Arising from Committee of Council, for Council Approval	
8.2	Minutes Approval - Committee of Council	
8.3	Staff Reports of a Routine Nature for Information or Action	
8.3.1	LED Conversion Program Phase 1 Update, 2023-0092-Public Works	60 - 66
8.3.2	Town Hall Building Addition March Update, 2023-0082-Public Works	67 - 75
8.3.3	Official Plan Review and Update, 2023-0091-Planning	76 - 77
8.3.4	Single Source for Architect for Centennial Park Accessible Universal Washroom Addition, 2023-0084-	78 - 82

Corporate Services

8.3.5	Single Sourcing - Ward Boundary and Council Composition Update and Selection Process for Deputy Mayor, 2023-0090-Clerks	83 - 85
8.4	Action Correspondence of a Routine Nature	
8.4.1	Canadian Viral Hepatitis Elimination Day - March 11, 2023	86 - 88
8.5	Information Correspondence	
8.5.1	Town of Lincoln Council Resolution re: Ontario School Board Elections	89 - 90
8.5.2	Ombudsman Open Meetings Guide for Municipalities	91 - 136
8.6	Regional Municipality of Niagara Correspondence for Information or Action	
8.6.1	Illegal Dumping 2022 Year End Summary and Updates	137 - 155
8.6.2	2022 Niagara Region Employment Inventory Results	156 - 174
9.	Consent Agenda Item(s) Lifted for Separate Consideration, if any	
10.	Presentation and Consideration of Reports	
10.1	Members of Council Reports	
10.2	Staff Reports Requiring Action	
10.2.1	JP Niagara Tulip Experience Date Night Event - 2023 Designation of Municipal Significance , 2023-0080-Clerks	175 - 184
10.2.2	Recommendation Report - Draft Plan of Subdivision and Zoning By-law Amendment, Kunda Park Phase 4, 2023-0089-Planning	185 - 236
10.2.3	Quaker Road Reconstruction Project Update, 2023-0083-Public Works	237 - 242

11. Unfinished Business
12. New Business
13. Presentation and Consideration of By-Laws 243 - 294
 1. By-law 24-2023 - Being a By-law to authorize the execution of a subdivision agreement with Lally Homes Ltd. and the Corporation of the Town of Pelham – Emerald Trail Subdivision. Lally Homes Ltd. and the Corporation of the Town of Pelham. File No. 26T19-01-2021
14. Motions and Notices of Motion
 - 14.1 Notice of Motion - Councillor Olson

One-year extension to ease of zoning restrictions for temporary 'pop-up' patio and food trucks.
15. Resolution to Move In Camera

BE IT RESOLVED THAT the next portion of the meeting be closed to the public in order to consider a matter under Section 239 (2) of the *Municipal Act*, as follows:

(b) - personal matters about an identifiable individual, including municipal employees and (d) - labour relations or employee negotiations - 2 items (Consideration of Appointments to Advisory Committees and External Boards)
16. Rise From In Camera
17. Appointments to Advisory Committees and External Boards
18. Confirming By-Law 295 - 295
19. Adjournment

Please fill out and return no later than 12 p.m. noon ten (10) days prior to the Meeting you wish to appear. Completed forms, including presentation materials are to be submitted to the Clerk's department and can be dropped off or emailed to clerks@pelham.ca

Name or Organization or Firm: Wayne Liebau	
Name and Title of Presenter(s): Wayne Liebau	
Address: 340 Foss Road, Fenwick	
Telephone: 905-892-5870	Email: wayne@earthstar.ca

Date of Meeting Requested: March 22, 2023

How will you attend Council? ☒ In-person ☐ Electronically
 *The delegate shall notify the Clerk at least five (5) business Days in advance.

Subject matter to be discussed:	Total solar eclipse of April 2024
If not for information, identify the desired action requested:	

Have you previously spoken on this issue? ☐ Yes ☒ No

If a group or individual has previously appeared as a delegate, a further delegation from the same group or individual on the same topic will not be permitted, unless there is significant new information to be brought forward.

Do you have presentation material or speaking notes? ☒ Yes ☐ No

Delegations are required to provide the Clerk's department presentation materials for publication in Council's agenda package. Materials must be provided no later than 12 p.m. noon ten (10) days prior to the Meeting.

I have read and understand the Delegation Protocol attached to this form and understand that the information contained on this form, including any attachments submitted, will become public documents and listed on the Town's meeting agenda and posted to the Town's website. I also understand that as a participant of this meeting, I will be recorded and further understand that this recording will be posted to the Town of Pelham's YouTube Channel.

Wayne Liebau
 Signature

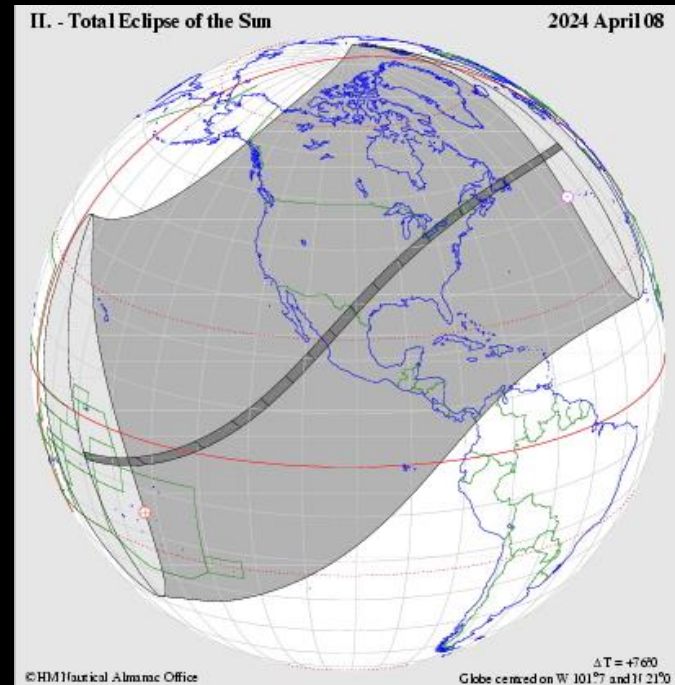
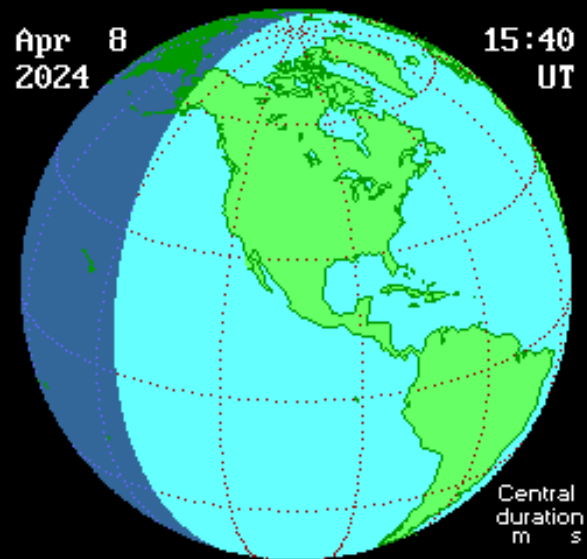
March 12, 2023

Date

April 8, 2024



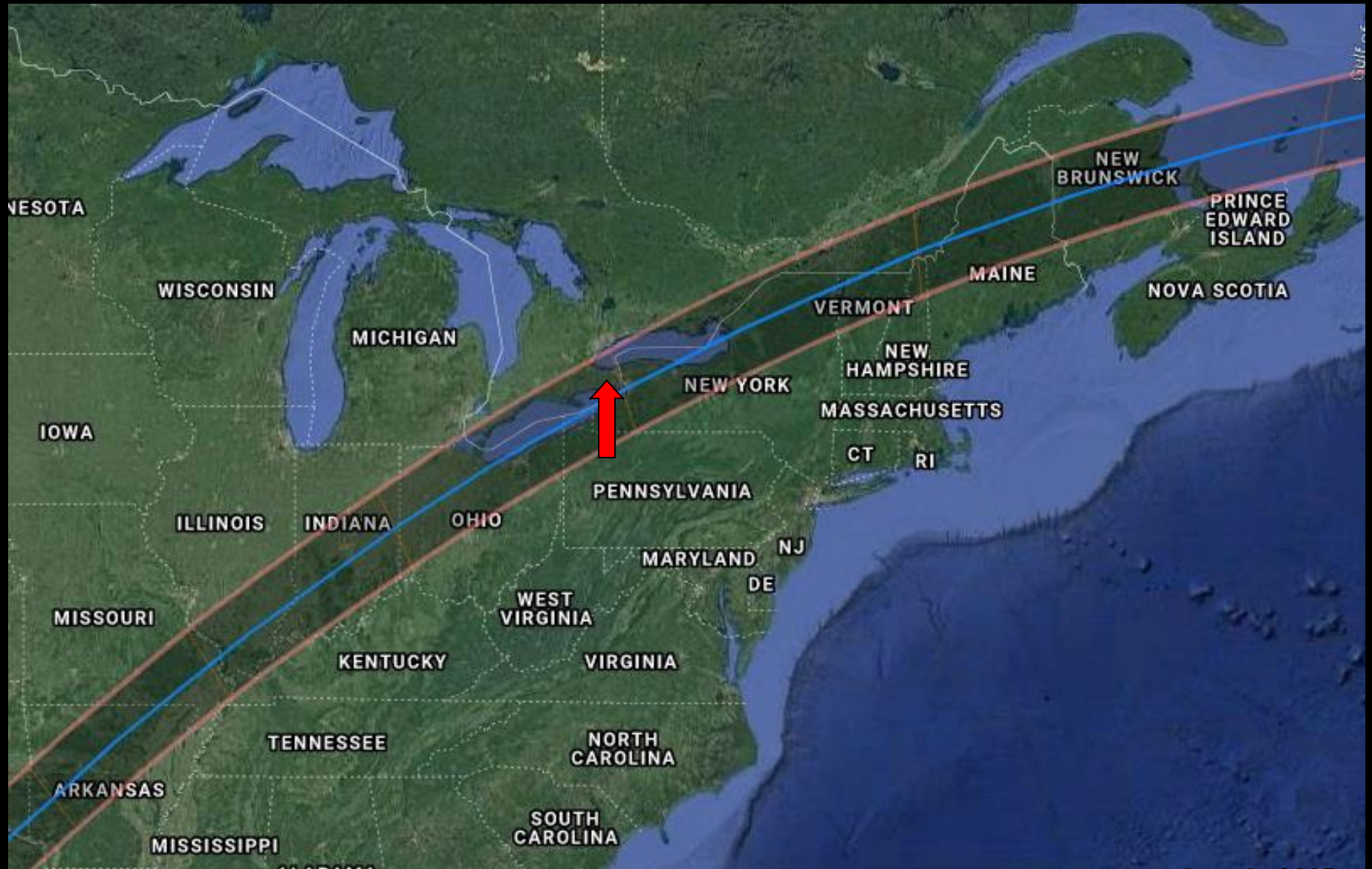
Path of the Moon's shadow



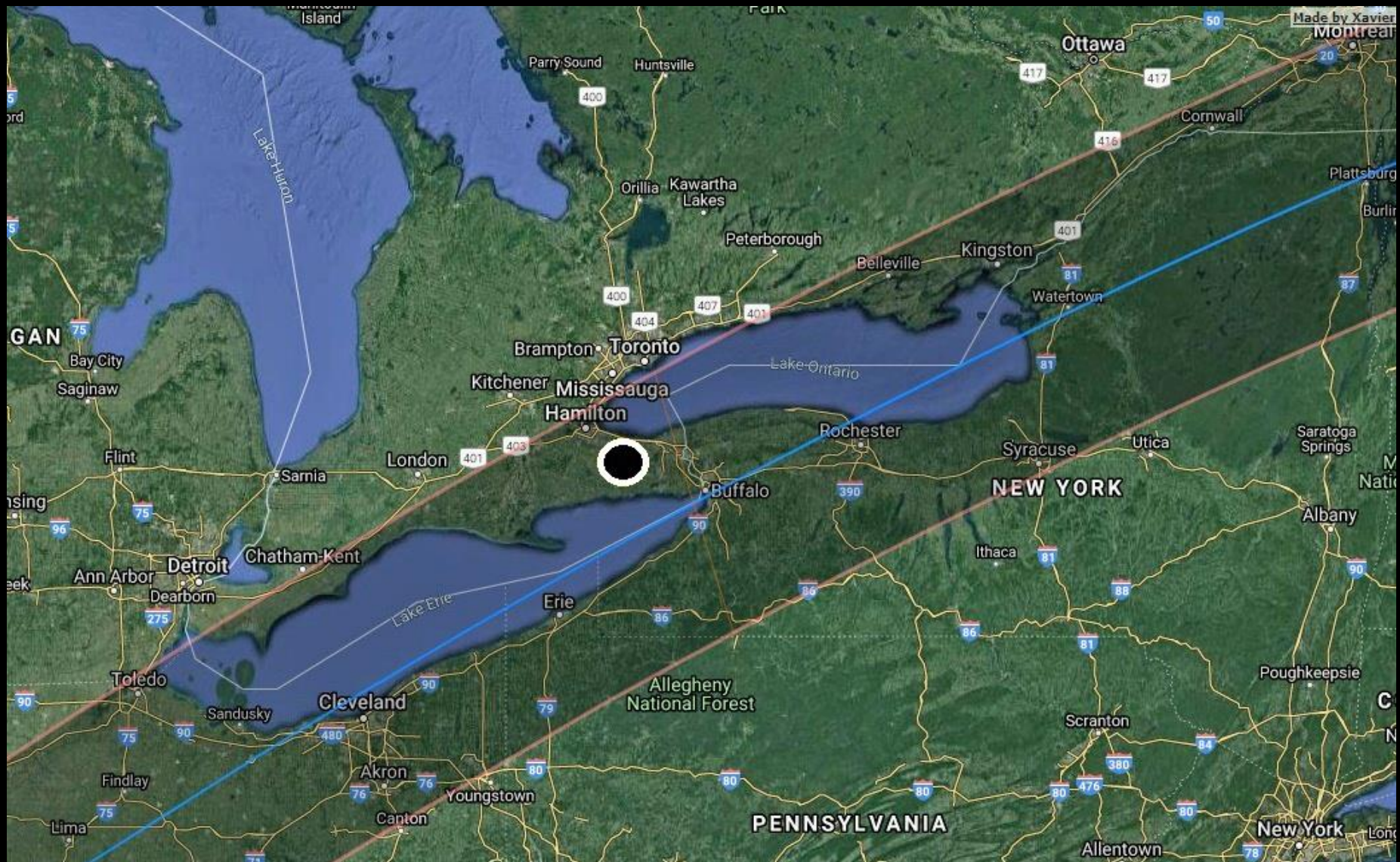
April 8, 2024



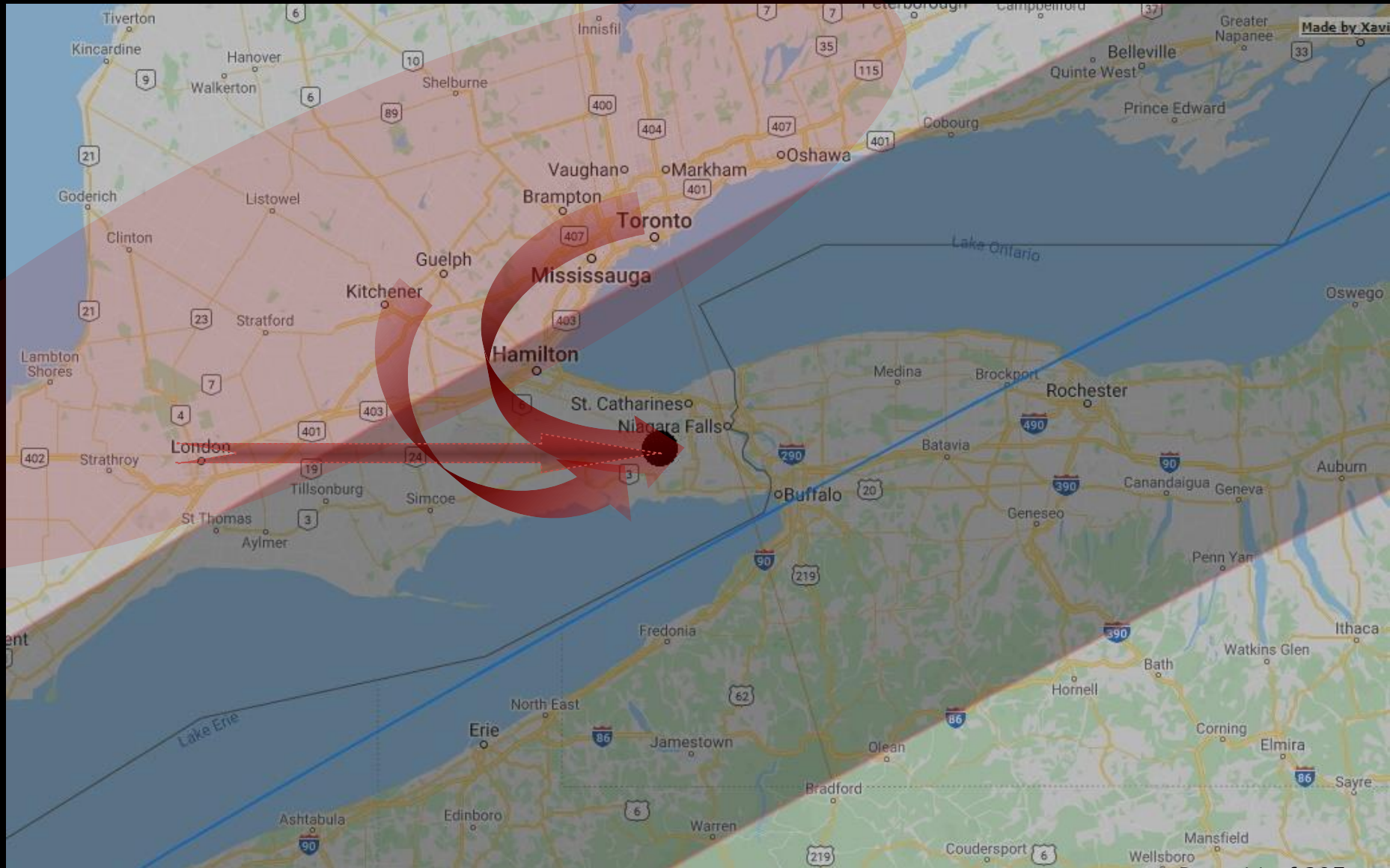
April 8, 2024



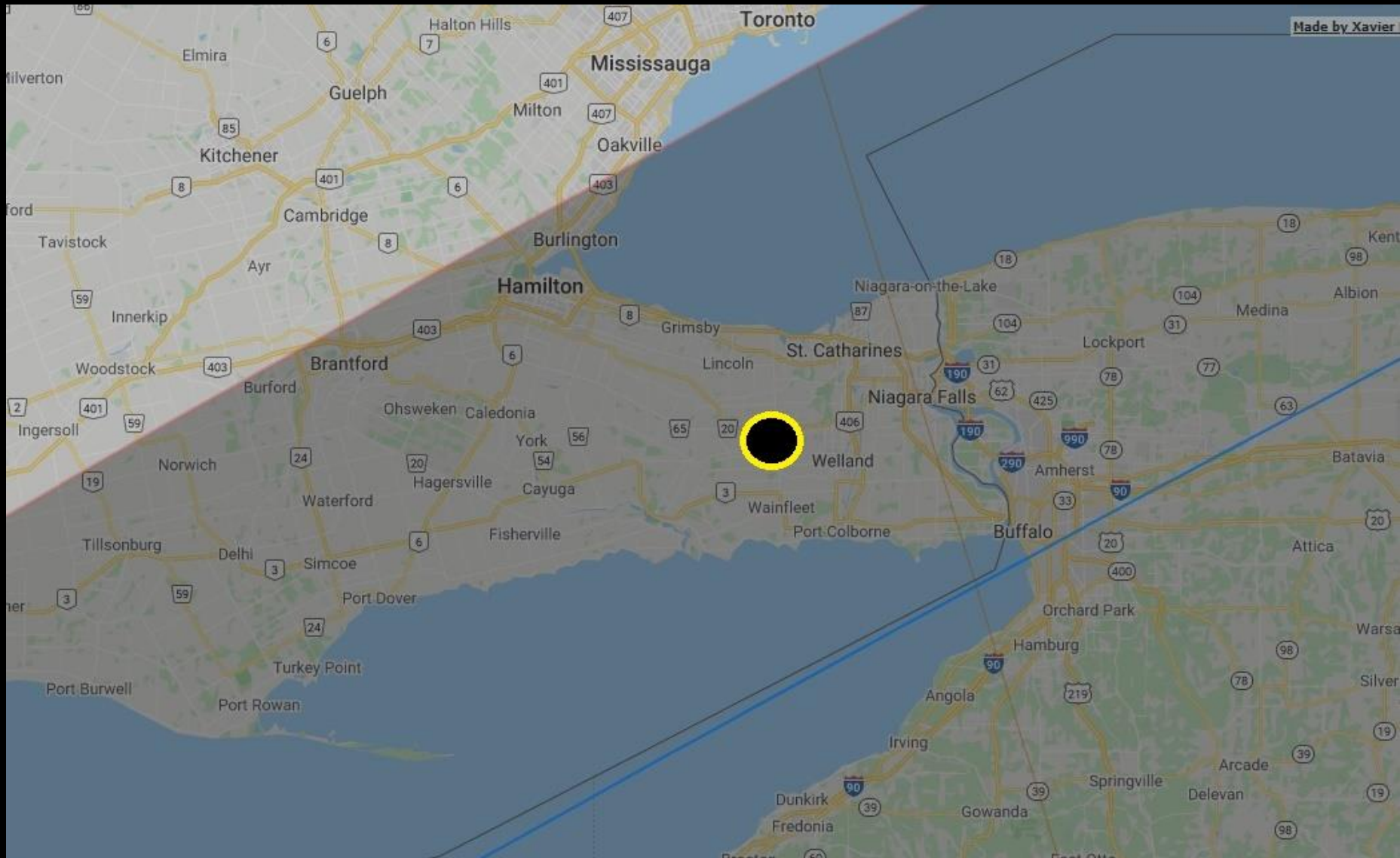
April 8, 2024



April 8, 2024



April 8, 2024



A black t-shirt is displayed against a white background. The t-shirt features white text and a graphic. At the top, the date "April 8, 2024" is printed in a white, slightly slanted, sans-serif font. Below the date is a white circle with a horizontal line through its center, resembling a stylized eye or a target. At the bottom, the phrase "I TOTALLY BLACKED OUT IN PELHAM, ONTARIO" is printed in a white, all-caps, sans-serif font, arranged in four lines.

April 8, 2024

I TOTALLY
BLACKED OUT
IN PELHAM,
ONTARIO







Photo: John Nemy, Carol Legate

2024 Eclipse presentation to Pelham Town Council

On the afternoon of April 8, 2024, Pelham will have the extraordinarily good fortune of lying within the narrow path of a total eclipse of the sun, as the Moon's shadow sweeps across the continent in broad daylight.

The event will be brief but hugely popular.

Because of Niagara's highly favoured position along the path of totality, it offers the best potential viewing in central Canada.

Outside the zone of totality there is a partial eclipse, with less and less of the Sun covered as distance increases. It's important to know that even a 99% partial eclipse, while dramatic, is not like a total eclipse.

It will get dark enough that birds will go silent, automatic lights will come on, and, if skies are clear, some stars will pop out.

What are our chances of having decent skies? Early April is notoriously variable – there could be anything from snowstorms to clear and warm conditions.

Based on more than 50 years of records, I estimate we have about a 50:50 chance of decent viewing.

People will travel - sometimes great distances - to see a total eclipse.
That afternoon, millions of people will travel to be in the path of totality.

Regardless of our uncertain skies, LOTS of people will come to Niagara.
How many? Most Ontarians, including those in the most densely populated parts of the Golden Horseshoe, live OUTSIDE of the zone of totality.

Better weather prospects in Mexico and Texas may attract dedicated eclipse-chasers. But for millions of Canadians, Niagara is the closest destination.

Some will come just for the day's event. Others will plan vacations around it.
Depending on near-term weather forecasts, many people may attempt to travel last-minute, into or out of Niagara.

Then there is the inevitable mass exodus when the event ends.
Travel conditions will be difficult, especially on April 8, but also before and after.

If anyone is wondering whether it will really be such a big deal, this will be a major event.

During the 2017 eclipse that crossed the US, not only was the eclipse path zone in the eastern US crowded, but remote parts of the West were jammed beyond anything locals had ever seen.

Even with advance planning, many areas saw groceries, fuel and general supplies run low.

Johnnie-on-the-Spot rentals were sold out years before.

Accommodations were sold out years in advance; prices went stratospheric; at least one state had to grapple with forced cancellations and price-gouging; everyone with a bit of land seemed to be renting space for "dry camping".

Lucky as we are to be in the path this time, there are significant ramifications beyond travel headaches. For example, there are implications for:

- Emergency services (police, fire, ambulance), hospitals
- Accommodations, from hotels to campgrounds (which will be fully booked)
- Tourist operations
- Service businesses such as restaurants, grocery stores, gas stations, Johnny-on-the-Spot rentals, retail entrepreneurs, etc. (employers should also plan for the fact that many workers will justifiably want to watch the eclipse)

Positive aspects range from relatively mundane commercial prospects to once-in-a-lifetime opportunities in the cultural and educational fields.

This is a huge opportunity for the Town and for all educational institutions.

Though weather conditions will have an influence on numbers, Niagara will be crowded. Supplies of many types may be stretched. Traffic will likely be a nightmare.

Preparedness can ensure that challenges don't diminish a wonderful event.

Planning is essential and cannot start too soon.

Pelham can:

- Work with other levels of government, relevant agencies & institutions, school boards, business associations, Chambers of Commerce, etc.
- Organize and support local publicity; educate the public, including about viewing safety
- With others, such as the Niagara Centre of the Royal Astronomical Society of Canada, and John Nemy and Carol Legate of the Island Stars Observatory, plan public events
- Identify public and private lands for eclipse viewing
- Consider promptly obtaining supplies of proper eclipse glasses
- Strategize how to accommodate visitors: nearby municipalities have more options, but Pelham should do its part. For example, with normal accommodations being full, plan how to make extra trailer camping available, potentially for several days.
- Plan for visitors – most will have no idea where things are or where to go. Do it right so they are attracted to return another time.
- **GET GOING NOW!**

We are in the path of one of Nature's most spectacular and rare phenomena.
Let's be ready.

Town of Pelham Strategic Plan 2023-2027



Table of Contents

Strategic Plan Overview

Message from the Mayor

2023-2027 Council

Senior Leadership Team

About Pelham

Mission

Vision

Values

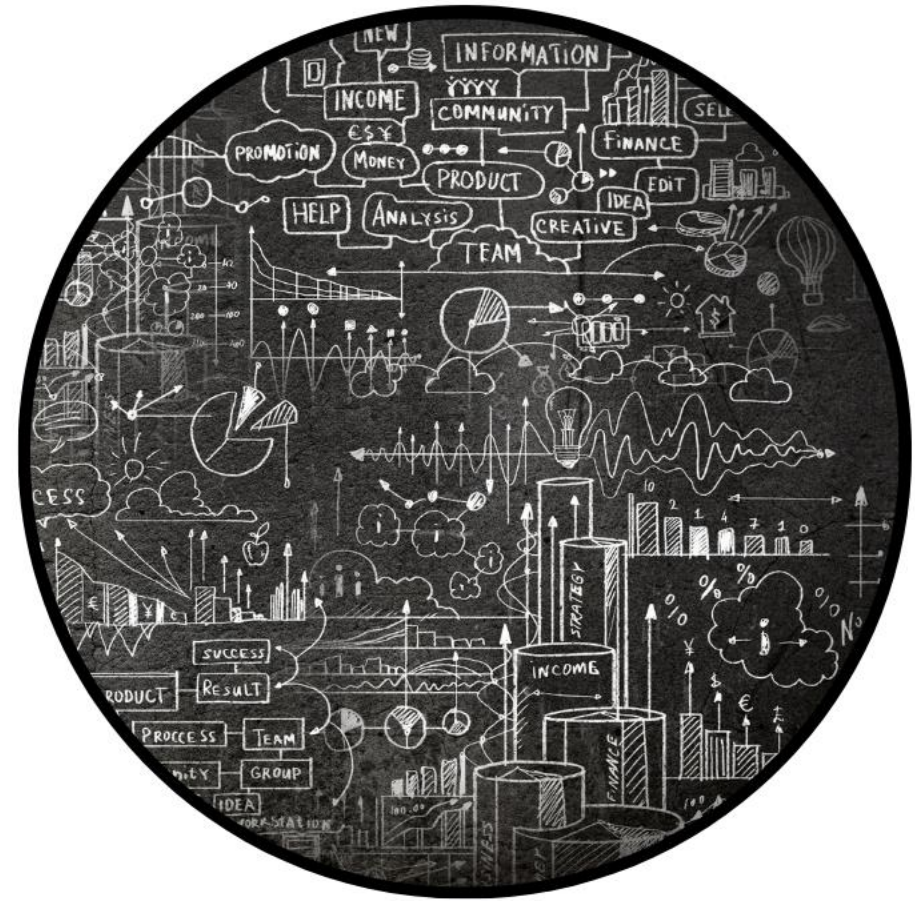
Strategic Focus Areas



Strategic Plan Overview

The Council and staff of the Corporation of the Town of Pelham are proud to present the 2023-2027 Strategic Plan, a guiding document for the municipal corporation.

This four-year plan will guide the decision-making and the work to be done within Pelham. The plan will allow the community to measure performance each year.



Message from the Mayor

Fresh off an election, community leaders came together to identify a strategic direction for the place we call home. Council members brought forward the desires of residents, while staff provided technical data, which were combined to create the foundation of the strategic plan.

Strategic goals and priorities were established for the coming years. Council and staff will now be accountable for implementing this plan, which provides purposeful actions that will align with the vision and mission for Pelham.



This plan is ambitious yet achievable and reflects what residents have shared about their hopes, needs and aspirations for the community.

2023-2027 Council

The Town of Pelham Council consists of seven members serving a four-year term. The Mayor is elected Town-wide, and six councillors are elected from three wards across the Town.



Mayor
Marvin Junkin



Ward One Councillor
Kevin Ker



Ward Two Councillor
Brian Eckhardt



Ward Three Councillor
Bob Hildebrandt



Ward One Councillor
Wayne Olson



Ward Two Councillor
John Wink



Ward Three Councillor
Shellee Niznik

Senior Leadership

The Chief Administrative Officer and Directors are responsible for implementing the direction set out by Council, including the provision of high-quality community-focused services and overall leadership to the organization.

The Senior Leadership Team is responsible for implementing the goals and objectives outlined in the Strategic Plan.



David Cribbs
Chief Administrative
Officer (CAO)



Teresa Quinlin-Murphy
Director, Corporate Services
and Treasurer



Jennifer Stirton
Town Solicitor



Barbara Wiens
Director, Community Planning
and Development



Vickie vanRavenswaay
Director, Recreation, Culture,
and Wellness



Bob Lymburner
Fire Chief and Director of
By-law Services



Holly Willford
Town Clerk



Jason Marr
Director, Public Works

About Pelham

Located in the heart of Niagara is The Town of Pelham, a fusion of rural and urban areas in five communities. Pelham offers residents a unique lifestyle rich with history, agriculture and natural beauty. Pelham’s central location makes it an ideal community for commuters, life-long residents, and businesses. With a range of services, facilities, parks, trails and award-winning events, Pelham embraces progress while preserving a small-town feel.



126 sq. km Land Area
144 Population Density
per sq. km



18,192 Total Population
By age group 0-14: 15%
15-64: 57.8% | 65+: 27.3%



6.3% Population Growth
(2016 to 2021)
From 17,110 to 18,192

Everyone has a role

A strategic plan has roles for everyone in the municipality.



Council

makes the decisions, establishes the priorities, identifies the values, and holds staff to account. Council also ensures that Town policy furthers strategic objectives.



Town Staff

ingrain the plan into the corporate fabric, do the work identified in the plan and provide reporting and feedback on progress towards objectives.



Residents hold both council and staff accountable and demand transparency. Residents also serve as community volunteers who partner in the delivery of events and services.



Mission

Pelham – a caring, active
and sustainable community.



**The Mission is the ultimate reason for everything
that is done by the municipality.**



Vision

Pelham promotes an exceptional quality of life and values its people, their experiences and the environment.



The Vision is the motivation, and it provides the foundation for the Strategic Plan.

Values

Collaborative
Inclusive
Integrity
Respectful
Resilient



Values underpin the strategic plan and are used for guidance.

Strategic Focus

Together, the Strategic Priorities provide areas of emphasis designed to help achieve the vision over the next four years.

- **Enhancing Capacity & Future Readiness**
- **Financial Health**
- **Environmental & Climate Adaptation**
- **Community Development & Growth**
- **Infrastructure Investment & Renewal**



Each priority contains a set of action items which are specific tasks to advance the areas of strategic focus.





Environmental & Climate Adaptation

By focusing on environmental and climate adaptation, the Town of Pelham will prioritize actions that will continue to protect and conserve the natural heritage and resources in Pelham. Priorities of the Town in this area will provide the foundation for a clean, safe and sustainable environment for present and future generations.



Pelham is in a position to be a strong steward of the environment.





Environmental & Climate Adaptation

Action items to accomplish include:



Community Gardens
/Communities In Bloom,
Green Public Participation



Environmental and/or
Climate Change
Advisory Committee



Eco/Energy Building
Standards Report



Improved Recycling at
Municipal Events



Policy & Operations
re: Stormwater
Management Ponds



Electric Vehicle Fleet &
Charging Stations



Net Zero Facilities
Report



Tree Canopy &
Reforestation





Community Development & Growth

The future of Pelham will be determined by how development and growth pressures are managed. The central challenge will be to achieve measured growth of the community while protecting the high quality of life presently enjoyed by residents.



Pelham is more than a location, it is also a dynamic community of people.





Community Development & Growth

Action items to accomplish include:



Community Safety
Zones/Traffic Studies



East Fenwick
Secondary Plans



New Official Plan



Lathrop Trail System



Strategic use of Town
Lands



South Fonthill Secondary
Plans





Infrastructure Investment & Renewal

The Town of Pelham is home to a network of roads, trails, parks and community infrastructure that supports the residents. This strategic priority seeks to ensure that funding resources are sufficient to meet the maintenance, replacement and future needs of Pelham's infrastructure.



Planning for future needs and developing the infrastructure requirements of today will prepare a strong foundation for the future.





Infrastructure Investment & Renewal

Action items to accomplish include:



Evolution of Fire Fleet
(Heavy Rescue)



Future of Fonthill
Library Branch



Facilities Master Plan



Revised Engineering
Standards



Fire Station #1
Refurbish/Expansion



Roads Standards
Recycle/Innovation



Tice Road Expansion/
Reno/Relocation





Enhancing Capacity & Future Readiness

Enhancing capacity and future readiness ensures that the municipal corporation will be able to meet the future needs of the community. A proactive approach with progressive management, utilization of technology and celebration of people will provide the framework to achieve this outcome.



Preparing for the future needs in Pelham.





Enhancing Capacity & Future Readiness

Action items to accomplish include:



Continuous Technological Enhancement – Corporate Services



Parking Technology



Continuous Technological Enhancement – Public Works



New System for Special Events



Municipal Elections & Governance Model



MCC Staff & Resource Reporting



Recreation & Culture Master Plan



Update Code of Conduct





Financial Health

Financial reserves, levels of debt and property taxes collectively form the Town's financial health. Continuous improvement of these financial metrics builds the foundation for a brighter future in Pelham.



Fiscally responsible while respecting the needs and resources of taxpayers.





Financial Health

Action items to accomplish include:



Airport Governance,
Financing & Capital Needs
Assessment



Insurance Review



Future of
Investment in Hydro



Formal Debt Targets &
Discussion of Financial
Positioning



Explore Shared
Service Model with
municipal partners



Stay Connected

Learn more about the strategic priorities and action items completed and in progress by the Town of Pelham.

Stay up-to-date on the activities and progress over the next four years through the engaging Pelham platform and Town website.



pelham.ca/strategicplan



Inquires related to this plan and requests for alternate formats can be directed to:

The Corporation of the Town of Pelham
Town of Pelham, Municipal Building
P.O. Box 400, 20 Pelham Town Square
Fonthill, Ontario
L0S 1E0

2023 – 2027 Strategic Plan Action Item Reporting Metrics

Enhancing Capacity & Future Readiness

Update Code of Conduct	<ul style="list-style-type: none">• Deliver draft
Governance Model (Elections, Committee Structure, Council Meetings)	<ul style="list-style-type: none">• Contract for services, procedure reports, purchase new voting technology
New System for Special Events	<ul style="list-style-type: none">• Deliver a new system
Parking/Technology Solutions	<ul style="list-style-type: none">• Deliver technology and Council Reports
Continuous Technological Enhancement – Public Works	<ul style="list-style-type: none">• Grant applications, reports, budgetary approvals
Continuous Technological Enhancement – Corporate	<ul style="list-style-type: none">• Grant applications, reports, budgetary approvals
RCW Report Future	<ul style="list-style-type: none">• Series of reports and implementation of recommendations
Recreation Master Plan	<ul style="list-style-type: none">• Public consultation sessions and delivery of final report

Financial Health

Future of Investment in Hydro	<ul style="list-style-type: none">• Staff Report, Council Decision
Formal Debt Targets & Discussion of Financial Positioning	<ul style="list-style-type: none">• Staff Report, Council changes or affirmation of current targets
Insurance Review	<ul style="list-style-type: none">• Negotiations, Staff Report
Shared Service Model (Building Inspection, ACC, Purchasing, Planning)	<ul style="list-style-type: none">• Series of reports, recommendations and negotiations
Airport Governance, Financing & Capital Needs Assessment	<ul style="list-style-type: none">• Series of Legal Update Reports

Environmental & Climate Adaptation

Environmental and/or Climate Change Advisory Committee	<ul style="list-style-type: none"> • Create TOR, advertise positions, start meetings
Community Gardens/Communities in Bloom/Green Public Participation	<ul style="list-style-type: none"> • Series of Reports, Creation of Gardens, Join CIB
Policy & Operations re: Stormwater Management Ponds	<ul style="list-style-type: none"> • Report recommendations and passage of policy
Electric Vehicle Fleet & Charging Stations	<ul style="list-style-type: none"> • Purchase of vehicles and installation of charging stations
Improved Recycling at Municipal Events	<ul style="list-style-type: none"> • Education campaign/service options for Council consideration • Molok operational review
Tree Canopy & Reforestation	<ul style="list-style-type: none"> • Complete tree inventory/Natural Asset Management Plan
Eco/Energy Building Standards Report	<ul style="list-style-type: none"> • Write a report
Net Zero Facilities Report	<ul style="list-style-type: none"> • Report to Council

Community Growth & Development

New Official Plan	<ul style="list-style-type: none">• Public consultation• Engage Pelham content• Public meeting(s)• Various status update reports• Possibly legal process• Third party commentaries
East Fenwick Secondary Plan	<ul style="list-style-type: none">• Public consultation• Engage Pelham content• Public meeting(s)• Various status update reports• Possibly legal process• Conservation Authority commentary
South Fonthill Secondary Plan	<ul style="list-style-type: none">• Public consultation• Engage Pelham content• Public meeting(s)• Various status update reports• Possibly legal process• Conservation Authority commentary

Community Growth & Development cont'd

Strategic Use of Town Lands	<ul style="list-style-type: none">• Updating appraisal for value of land• Data for parking lot usage• Options report
Community Safety Zones/Traffic Studies	<ul style="list-style-type: none">• Write a report• Revise Town's Traffic Calming policy• Update and reporting on Vision Zero activities in the Town• Review of AMPS as they pertain to traffic
Lathrop Trail System	<ul style="list-style-type: none">• Collaboration with NCC• Reports/delegations with community partners

Infrastructure Investment & Renewal

Future of Fonthill Library	<ul style="list-style-type: none">• Grant applications and obtaining third party funding• Formation of working group with LPPL• Public consultation on features/design of renovated facility
Facilities Master Plan	<ul style="list-style-type: none">• Possible Modernization Grant• Possible 2024 budget, unless grant approved
Evolution of Fire Fleet (Heavy Rescue)	<ul style="list-style-type: none">• RFP and delivery of vehicle(s)
Fire Station #1 Refurbish/Expansion	<ul style="list-style-type: none">• RFP for design/operational plan• 2024 budget item• AODA compliant (2025)
Roads Standards Recycle/Innovation	<ul style="list-style-type: none">• Design/build project for road rehabilitation program• Improving overall PCI
Tice Road Expansion/Reno/Relocation	<ul style="list-style-type: none">• Undertaking a study to determine best way to improve operational facility
Revised Engineering Standards	<ul style="list-style-type: none">• Write a report to Council with revised standards

REGULAR COUNCIL MINUTES

Meeting #: C-06/2023
Date: Wednesday, March 22, 2023
Time: 9:00 AM
Location: Meridian Community Centre - Accursi A and B
100 Meridian Way
Fonthill, ON
L0S 1E6

Members Present: Mayor Marvin Junkin (Part-time)
Councillor Bob Hildebrandt
Councillor Wayne Olson
Councillor John Wink
Councillor Kevin Ker
Councillor Shellee Niznik
Councillor Brian Eckhardt

Staff Present: David Cribbs
Bob Lymburner
Jason Marr
Teresa Quinlin-Murphy
Jennifer Stirton
Vickie vanRavenswaay
Barbara Wiens
Sarah Leach, Deputy Clerk
William Tigert
Ryan Cook

1. Call to Order and Declaration of Quorum

Noting that a quorum was present, the Deputy Mayor Wink called the meeting to order at approximately 9:00 am.

2. Land Recognition Statement

Councillor Eckhardt read the land acknowledgement into the record.

3. Approval of the Agenda

Moved By Councillor Kevin Ker

Seconded By Councillor Wayne Olson

BE IT RESOLVED THAT the agenda for the March 22, 2023, Regular meeting of Council be adopted, as circulated.

For (7): Mayor Marvin Junkin, Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (7 to 0)

Amendment:

Moved By Councillor Kevin Ker

Seconded By Councillor Wayne Olson

THAT the agenda be amended to add the addendum, being item 8.5.2.

For (7): Mayor Marvin Junkin, Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (7 to 0)

Motion as Amended:

Moved By Councillor Kevin Ker

Seconded By Councillor Bob Hildebrandt

BE IT RESOLVED THAT the agenda for the March 22, 2023 Regular meeting of Council be adopted, as amended.

For (7): Mayor Marvin Junkin, Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (7 to 0)

4. Disclosure of Pecuniary Interests and General Nature Thereof

There were no pecuniary interests disclosed by any of the members present.

5. Hearing of Presentation, Delegations, Regional Report

5.1 Delegations

5.1.1 Fonthill Platform Tennis Club - Request for Lease Renewal

Moved By Mayor Marvin Junkin

Seconded By Councillor Shellee Niznik

BE IT RESOLVED That Council receive the delegation from Terry Molkski, President of the Fonthill Platform Tennis Club regarding a request for lease renewal, for information.

For (7): Mayor Marvin Junkin, Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (7 to 0)

5.1.2 Climate Analysis and Strategic Planning

Moved By Councillor Brian Eckhardt

Seconded By Councillor Bob Hildebrandt

BE IT RESOLVED THAT Council receive the delegation from Nima Vaez-zadeh Asadi, Research Assistant and MSc. Candidate, Brock University Department of Earth Sciences regarding Climate Analysis and Strategic Planning, for information.

For (7): Mayor Marvin Junkin, Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (7 to 0)

5.1.3 Best Practices for Anticipating Weather and Climate Events

Moved By Councillor Bob Hildebrandt

Seconded By Councillor Wayne Olson

BE IT RESOLVED THAT Council receive the delegation from Pierre Simiganoschi, Research Assistant and MSc. Candidate, Brock University Department of Earth Sciences regarding best practices for anticipating weather and climate events, for information.

For (7): Mayor Marvin Junkin, Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (7 to 0)

Moved By Councillor Shellee Niznik

Seconded By Councillor Bob Hildebrandt

THAT the agenda be amended to move 10.1.4 before item 6.

For (7): Mayor Marvin Junkin, Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (7 to 0)

10.1.4 Fonthill Platform Tennis Club Lease Agreement Renewal, 2023-0075-Recreation

Moved By Councillor Brian Eckhardt

Seconded By Councillor Kevin Ker

BE IT RESOLVED THAT Council receive Report #2023-0075 Recreation – Fonthill Platform Tennis Club Inc. Lease Agreement Renewal, for approval;

AND THAT Council authorizes and directs staff to negotiate a lease agreement with Fonthill Platform Tennis Club Inc.;

AND THAT Council approve funding in the amount of \$25,000 (plus applicable taxes) for the installation a sanitary sewer and water service from the Platform Tennis Club facility funded from the Water and Wastewater Reserves. Staff will review the two options available and choose one of the following options: (1) either providing services from Welland Road or (2) to service it from the new development.

For (7): Mayor Marvin Junkin, Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (7 to 0)

6. Adoption of Council Minutes

Mayor Junkin left the meeting at 10:08 am.

Moved By Councillor Shellee Niznik

Seconded By Councillor John Wink

BE IT RESOLVED THAT the following minutes be adopted as printed, circulated and read:

1. RC-05/2023 - Regular Council - March 1, 2023

For (6): Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (6 to 0)

6.1 RC-05/2023 - Regular Council - March 1, 2023

7. Request(s) to Lift Consent Agenda Item(s) for Separate Consideration

8. Consent Agenda Items to be Considered in Block

Moved By Councillor Brian Eckhardt

Seconded By Councillor Wayne Olson

BE IT RESOLVED THAT the Consent Agenda items as listed on the March 22, 2023 Council Agenda be received and the recommendations contained therein be approved:

8. Consent Agenda Items to be Considered in Block

8.1 Presentation of Recommendations Arising from Committee of Council, for Council Approval

BE IT RESOLVED THAT Council hereby approves the Recommendations Resulting from the following:

SCOW-04/2023 - Special Committee of the Whole, Strategic Planning Session - February 25, 2023

8.2 Minutes Approval - Committee of Council

BE IT RESOLVED THAT the following minutes be adopted as printed, circulated and read:

- 1. SCOW-04/2023 - Special Committee of the Whole, Strategic Planning Session - February 25, 2023**

8.3 Staff Reports of a Routine Nature for Information or Action

8.3.1 Earth Week Activities April 16th - 22nd 2023, 2023-0067-Recreation

BE IT RESOLVED THAT Council receive Report #2023-0067-Recreation Pelham Earth Week Activities, for information.

8.3.2 Single Source Purchase for an Electric Vehicle, 2023-0078-Corporate Services

BE IT RESOLVED THAT Council receive memo – Single Source Purchase for Electric Vehicle, for information.

8.5 Information Correspondence

8.5.1 Pelham Cares - Thank you Card

BE IT RESOLVED THAT Council receive a thank you card from Pelham Cares, for information.

***8.5.2 City of Welland - Report CS-2023-10 YMCA Operating Contribution Agreement 2023-2027**

BE IT RESOLVED THAT Council receive the City of Welland Report CS-2023-10 entitled YMCA Operating Contribution Agreement 2023-2027, for information.

8.6 Regional Municipality of Niagara Correspondence for Information or Action

8.6.1 Niagara Region Report no. PDS 2-2023 re: Niagara Region Climate Change Projections

BE IT RESOLVED THAT Council receive report no. PDS 2-2023 from Niagara Region regarding approval of Niagara Region Climate Change Projections, for information.

8.6.2 Niagara Region Report no. CLK-C 2023-019 re: Motion Respecting Declarations of Emergency of Homelessness, Mental Health and Opioid Addiction

BE IT RESOLVED THAT Council receive report no. CLK-C 2023-019 from Niagara Region regarding approval of Motion Respecting Declarations of Emergency for Homelessness, Mental Health and Opioid Addiction, for information.

8.7 Advisory Committee Correspondence for Information or Action

8.8 Advisory Committee Minutes for Information

8.8.1 Pelham Finance and Audit Committee Minutes - May 22, 2022

BE IT RESOLVED THAT Council receive the Pelham Finance and Audit Committee Minutes dated May 22, 2022, for information.

8.8.2 Committee of Adjustment

BE IT RESOLVED that Council receive the Committee of Adjustment Minutes dated February 2, 2023 and February 7, 2023, for information.

For (6): Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (6 to 0)

10. Presentation and Consideration of Reports

10.1 Staff Reports Requiring Action

10.1.1 Special Event Permit Application - DeVries Fruit Farm Mother's Day Market 2023 , 2023-0061-Clerks

Moved By Councillor Shellee Niznik

Seconded By Councillor Wayne Olson

BE IT RESOLVED THAT Council receive Report #2023-0061 – Special Event Permit Application – DeVries Fruit Farm Mother’s Day Market 2023, for information;

AND THAT Council authorize and direct the Town Clerk to issue a Special Event Permit for the DeVries Fruit Farm Mother’s Day Market event on May 13, 2023, subject to the approval of the Town Clerk, Director of Public Works, Director of Community Planning and Development, Fire Chief, and any other applicable agency, upon receipt of satisfactory drawings, plans, permits, or other such documents as requested;

AND THAT the Special Event Permit include any such conditions of approval as requested by the said approval departments and or agencies;

AND THAT Council waive all licensing and fee requirements pursuant to By-Law No. 3186(2011) for craft vendors only in lieu of a \$150.00 Fire Inspection Fee, payable to the Town of Pelham prior to the issuance of the permit.

For (6): Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (6 to 0)

10.1.2 Planting of 4m wide wild flower buffer at River Estates Park , 2023-0068-Public Works

Moved By Councillor Kevin Ker

Seconded By Councillor Brian Eckhardt

BE IT RESOLVED THAT Council receive Report #2023-0068 Planting of 4m wide Wildflower Buffer at River Estates Park, for information;

AND THAT Council approve the planting of a 4m wide wildflower buffer between River Estates Park and the Stormwater Management Pond.

For (6): Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (6 to 0)

10.1.3 Execution of Subdivision Agreement for Emerald Trail (File no. 26T19-01-2021, 2023-0062-Planning

Moved By Councillor Wayne Olson
Seconded By Councillor Bob Hildebrandt

BE IT RESOLVED THAT Council receive Report #2023-62 – Execution of Subdivision Agreement – Emerald Trail (File no. 26T19-01-21);

AND THAT Council direct staff to prepare the By-law to authorize execution of the Subdivision Agreement for final approval of Emerald Trail Subdivision.

For (6): Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (6 to 0)

10.1.5 Potential Funding Options for Welland YMCA, 2023-0063-Chief Administrator Officer

Moved By Councillor Bob Hildebrandt
Seconded By Councillor Kevin Ker

BE IT RESOLVED THAT Council receive Report #2023-0063 Chief Administrative Officer;

AND THAT Council direct Staff to move forward with Option No. 1, to provide no funding to the Welland YMCA.

For (6): Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (6 to 0)

10.1.6 Capital Budget - Pumper Tanker 3, 2023-0079-Fire Dept

Moved By Councillor Brian Eckhardt
Seconded By Councillor Wayne Olson

Recommendation: BE IT RESOLVED THAT Council receive the memo Capital Project Pumper Tanker 3, for information;

AND THAT Council approve the purchase of Pumper Tanker Three (3) for a total of \$922,314, being \$22,314 over the 2023 capital budget approval of \$900,000;

AND THAT Council approve the overage of \$22,314 be funded from the Fire Equipment Reserve.

For (6): Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (6 to 0)

14. Motions and Notices of Motion

14.1 Councillor Wayne Olson - Pelham Cares 40th Anniversary

Moved By Councillor Wayne Olson

Seconded By Councillor Brian Eckhardt

WHEREAS Pelham Cares Inc. is a non-profit charitable organization serving the community of Pelham since April 18, 1983;

AND WHEREAS Pelham Cares endeavors to improve the quality of life and well-being of Pelham residents by offering food and hygiene products, youth sponsorship programs and a range of social services not provided for by other organizations or agencies;

AND WHEREAS more residents are calling upon the support of Pelham Cares as a result of the global pandemic, financial insecurity and increased cost of living;

AND WHEREAS Pelham residents, service clubs, businesses and the Town generously support and contribute to Pelham Cares through a variety of donations;

AND WHEREAS The Town of Pelham recognizes the dedication of Pelham Cares volunteers for their time and effort in enhancing the Town and encouraging residents to support one another;

AND WHEREAS Pelham Cares will celebrate its 40th anniversary on April 18, 2023, with a volunteer appreciation night to follow on May 24, 2023;

NOW THEREFORE BE IT RESOLVED THAT the Town of Pelham hereby proclaims May 24, 2023, as Pelham Cares Day in celebration of 40 years of service to the Pelham community.

For (6): Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (6 to 0)

15. Confirming By-Law

Moved By Councillor Shellee Niznik

Seconded By Councillor Bob Hildebrandt

BE IT RESOLVED THAT the following By-law be read a first, second and third time and passed:

Being a By-law No. 23-2023 to Adopt, Ratify and Confirm the proceedings of Council of the Town of Pelham at its Regular Meeting held on the 22nd day of March, 2023.

For (6): Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (6 to 0)

16. Adjournment

The meeting was adjourned at 11:04 am.

Moved By Councillor Kevin Ker
Seconded By Councillor Wayne Olson

BE IT RESOLVED THAT this Regular Meeting of Council be adjourned until the next regular meeting scheduled for April 5, 2023 at 9:00 am.

For (6): Councillor Bob Hildebrandt, Councillor Wayne Olson, Councillor John Wink, Councillor Kevin Ker, Councillor Shellee Niznik, and Councillor Brian Eckhardt

Carried (6 to 0)

Mayor: Marvin Junkin

Town Clerk: William Tigert

Subject: Update on the LED Streetlight Replacement Project**Recommendation:**

BE IT RESOLVED THAT Council receive Report #2023-0092 – Update on the LED Streetlight Replacement Project, for information.

Background:

On October 3, 2022, staff presented to council report #2022-231-Public Works – Update on the LED Streetlight Replacement Project. The purpose of the report was to provide the results of the IGA for Phase 1 of the project, provide an update on Phase 1 scope and project schedule, and provide an updated cost estimate for the entire conversion including Phase 2.

Analysis:

In November 2022, RealTerm began Phase 1 of the conversion program for the entire streetlight network for the Town of Pelham. It was anticipated that the installation of 564 fixtures would be completed in December 2022. However, due to weather conditions, the schedule was delayed to the new year. Throughout the month of November to December 2022, RealTerm completed 45% of the project, which equated to the installation of 226 of 564 fixtures.

At the end of January 2023, RealTerm completed 90% of the project which translated to 496 fixtures installed. Once again, due to weather conditions, the project schedule was pushed to be substantially completed by the first week of February 2023.

On February 23, 2023, RealTerm arranged an Installation Review Meeting with Town Staff and the contractor. The purpose of the meeting was to address deficiencies and determine the next steps following the installation period. The LED Streetlight Replacement Project Phase 1 has officially transitioned from installation to reconciliation. This means the installation has been successfully completed and moved to the maintenance period of the contract.

At its February 7th, 2022 regular meeting of Council, staff recommended that Council endorse and approve the Town entering into an agreement with RealTerm Energy Corporation to implement an LED Streetlight conversion program for the entire streetlight network.

Based on inflationary costs and following the completion of the initial IGA the revised cost to complete the entire conversion project is estimated at \$950,000. In the report, 2022-0036 (February 7, 2022) Council authorized the award of the project and entered into an agreement with Realterm Energy at an estimated amount of \$621,810 (plus applicable taxes) with the first phase of the project to be completed in 2022 to an upset limit of \$250,000.

Council has approved Capital Project RD-04-23 in the amount of \$700,000 to undertake Phase 2 of the project. Staff intends to move forward with Phase 2 of the project and to provide an updated contract to RealTerm Energy in the amount of \$700,000 (including applicable taxes) to complete the work. Phase 2 of the project will commence in the spring of 2023 and will be completed by the end of the calendar year 2023.

Overall, it is estimated that the Town's total savings for the Phase 1 and Phase 2 conversion will be approximately 74% representing a capital project cost payback of approximately 3.8 years.

Financial Considerations:

The total estimated cost to complete the LED conversion project based on the estimates provided by RealTerm Energy following the Phase 1 IGA is now \$950,000.

Phase 1 of the project included the replacement of 564 fixtures at a total cost of \$249,947 (including applicable taxes).

Based on the information received from the IGA the Town should realize approximately 74% in cost savings for utility operating costs (hydro) and reduced maintenance costs. For 564 fixtures this represents approximately \$62,526 per year resulting in a project payback of 3.8 years on the capital investment.

Staff recommended Phase 2 of the project as part of the 2023 Capital Budget in the amount of \$700,000 for Council's consideration. At its regular meeting on February 6, 2023 Council approved the 2023 Capital Budget and the \$700,000 required to complete Phase 2 of the LED Streetlight replacement project.

Alternatives Reviewed:

There were no alternatives reviewed in the drafting of this report since it is an update to Council on a previously approved capital project.

Strategic Plan Relationship: Grow Revenue - Promote Cultural Assets and Protect Environment

Providing a reliable and efficient street lighting network allows for the safe and efficient transportation of vehicles and pedestrians within the Town. In addition, an LED Streetlight Conversion program is in alignment with the implementation of the Town's Climate Change Adaption Plan helping to reduce energy usage and reduce greenhouse emissions and also provides an economic benefit to the Town through lower operation and maintenance costs.

Consultation:

Consultation was undertaken with RealTerm Energy in the preparation of this report.

Other Pertinent Reports/Attachments:

APPENDIX A – Phase 1 LED Conversion end of project meeting minutes.

Council Report #2022-0231 – Update on the LED Streetlight Replacement Project

Council Report #2022-0036 – LED Streetlight Conversion Binding Letter of Engagement between the Town of Pelham and RealTerm Energy Corp

Council Report #2021-0206 - Options for Implementing an LED Streetlight Conversion Program in the Town of Pelham

Prepared by:

Gimuel Ledesma, C.Tech., rcji
Engineering Technologist

Recommended by:

Jason Marr, P. Eng.
Director of Public Works

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer

FIELD INSTALLATION SUPERVISOR CLOSE-OUT MEETING CHECKLIST

☒ PROJECT INFORMATION:

Project Name	Pelham, On LED Street Light Upgrade	Project Number	P-1332
Meeting Location	Via Teams	Meeting Date	February 23, 2023

☒ MEETING ATTENDEES:

E-MAIL ADDRESSES ☒

Alain Cantillo, acantillo@realtermenergy.com	Kandi Heerkens, kandi.transtest@sympatio.ca	Gimel Ledesma, gledesma@pelham.ca
Bruce Ibbitson, ibbitson@realtermenergy.com	Derek Young, dyoung@pelham.ca	Nadera Nawabi, nnawabi@realtermenergy.com
Alain Cantillo, acantillo@realtermenergy.com		

☒ TALKING POINT WITH CLIENT *"I will distribute meeting minutes by email with a copy of this checklist."*

☒ CONTACT INFORMATION:

PROVIDED TO CLIENT ☐

Electrical Contractor	Trans Test	Municipal Contact	Jason Marr
Onsite Contact Name	Kandi Heerkens	Title	Director of Public Works
Phone number	613 223-0386	Phone number	905 892-2607
e-mail Address	kandi.transtest@sympatio.ca	e-mail Address	jmarr@pelham.ca

☒ TALKING POINT WITH CLIENT *"This is the contractor who will honor the one year workmanship warranty."*

☒ SCOPE OF WORK:

PROVIDED TO CLIENT ☒

TOTAL FIXTURES TO BE INSTALLED	FIXTURES INSTALLED
564 COBRAS	530 COBRAS

☒ PROJECT DURATION:

PROVIDED TO CLIENT ☒

Start Date	End Date
November 14, 2022	February 14, 2023

☒ TALKING POINT WITH CLIENT

"We have completed the installation phase of the project on the installation end date."

☒ QUALITY CONTROL:

PROVIDED TO CLIENT ☒

☒ FIS final quality assurance completed

N/A 3rd party QC inspection completed OR ☐ Booked for

Quality Control Deficiency Clean Up: ☐ Not Required OR ☒ Completed OR ☐ Booked for

FIS Quality Assurance Comments:

NO MAJOR ISSUES

☒ TALKING POINT WITH CLIENT *"Throughout the project FIS reviewed the installations and have deficiency's corrected as found."*

FIELD INSTALLATION SUPERVISOR CLOSE-OUT MEETING CHECKLIST

☒ POST INSTALLATION SAFETY REPORT:

PROVIDED TO CLIENT ☒

☒ No Safety Issues or Accidents Reported.

OR

☐ The following concerns or accidents were addressed during the project:

Concern	Resolution
None reported to Client or RTE	

☒ INSTALLATION DEFICIENCY'S:

PROVIDED TO CLIENT ☐

☐ No outstanding items to address.

OR

☐ The following deficiencies will be addressed post project:

Deficiency	Owner	Due Date
See listing at the end of this document		

☒ CLOSING DOCUMENTATION:

PROVIDED TO CLIENT ☒

☒ Electrical Permit – Pending

☒ Recycling Certificates – Pending

☒ OUTAGE PROCESS POST INSTALL:

PROVIDED TO CLIENT ☐

Post Installation Warranty process is as follows:

Client to send an email to service@realtermenergy.com with the following information:

- RTE ID (found on the map)
- Municipal Street Address
- Description of the Issue

☒ TALKING POINT WITH CLIENT – *"Helpful descriptions include always on, always off, strobing, intermittent, or on fire."*

☒ CLOSEOUT:

☒ TALKING POINT WITH CLIENT – *"Product Specification Sheets, Recycling Certificates, Inspection Certificates, warranty information will be provided in the e-binder to come at a later date."*

☒ TALKING POINT WITH CLIENT – *"Feedback is always welcome can be provided to feedback@realtermenergy.com"*

☒ TALKING POINT WITH CLIENT – *"Thank you for being our customer, please contact me if I can help in the future."*

FIS Name	Bruce Ibbitson
	<div>DocuSigned by: BRUCE IBBITSON C14289500C36428</div>
Date	February 23, 2023

FIELD INSTALLATION SUPERVISOR CLOSE-OUT MEETING CHECKLIST

Notes:

- 564 SOW, Installed 530, 2 not installed - Misc. Issues, 2 not installed – No Access, 2 not installed – no pole/light

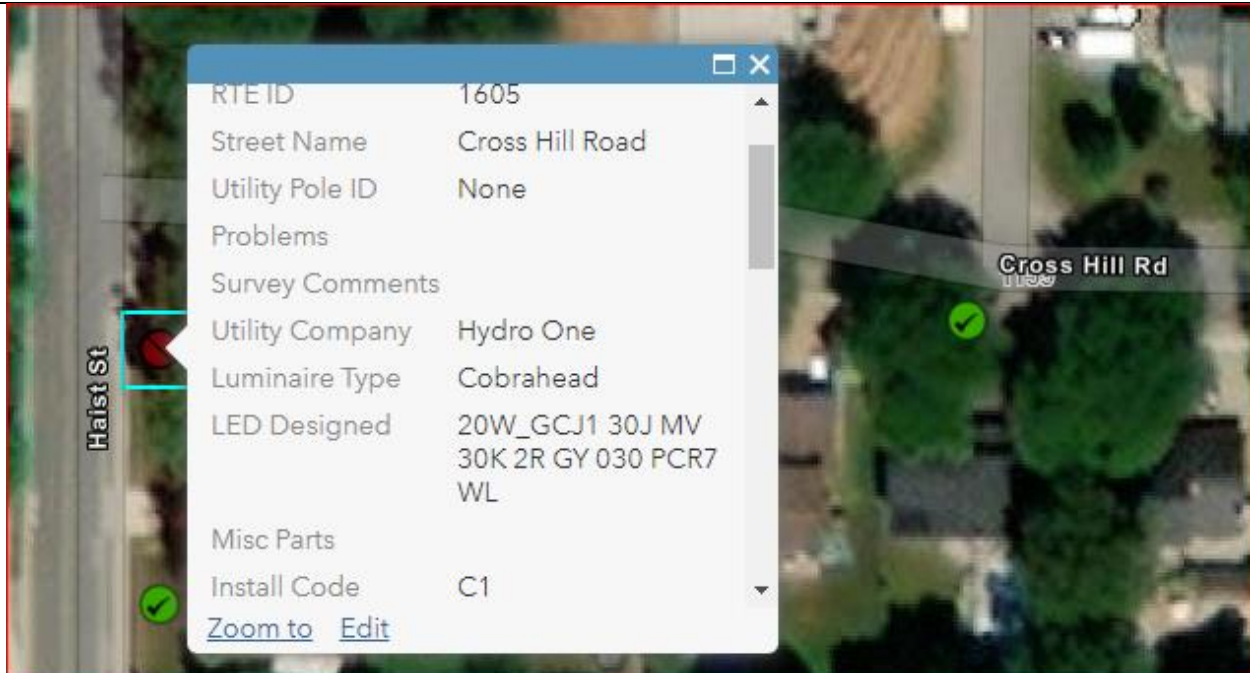
Installation	
Row Labels	Count of Status
Installed	530
No Replacement - Client Request	12
Not Installed - Misc Issues	2
Not Installed - No Access	2
Not Installed - No Pole Or Light	2
Grand Total	548

- Start Date: Nov.14/22, End Date: Feb.14/23
- 218 LED Upgrades, 312 LED Upgrades HV
- ID 1260/1261 Not Installed – No Access: will be part of next project



- ID 1395 Not Installed – Misc. Issues: was not a cobra, deco installed at this location
- ID 1605 Not Installed – Misc. Issues: was originally located on Cross Hill Rd, move to Haist St., should be C4, will be part of next project

FIELD INSTALLATION SUPERVISOR CLOSE-OUT MEETING CHECKLIST



-
- Traffic Control was discussed, Book 7 to be followed, Short term durations less than 20 minutes, ROP was not req'd
- Locations to avoid during peak travel conditions – typical morning and traffic commutes.
- Road Construction Projects: N/A
- Preferred Starting point – no preference.
- NTP documents were provided prior to the start of the project
- No major tree trimming was req'd, odd small branch, nothing more.
- FIS QC completed and issued, no major issues.
- Outage List provided by Pelham was sorted and corrected, reoccurring outages on Sadler St. (bad underground will be repaired by Transtest who is the Maint. EC), repairs at Cynithia Court were completed earlier in the week, FH issue, all good now
- C.O. Quote provided for the supply of one knock down Post Top Deco at 785 Canboro Rd, installation by Trantest
- C.O.: Allowances of wiring, FH and secondary connections were increased to reflect field conditions being experienced
- Status of Outstanding EC Documentation: Pending recycling docs, Product Returned to Client (PRC) pending.
- ESA inspection is scheduled for next Tuesday, Feb.28/23
- **Project now moves from Installation to Reconciliation**

Subject: Town Hall Building Addition March Update**Recommendation:**

BE IT RESOLVED THAT Council receive Report #2023-0082-Public Works – Town Hall Building Addition March Update, for information.

Background:

On February 21st, 2023, staff presented to council report #2023-0049-Public Works – Town Hall Building Addition February Update. The report provided updated information on the construction progress of the Town Hall Building Addition project. In the month since staff presented the report to Council, work on the building addition has progressed steadily in accordance with the project schedule.

Analysis:

In the months of February and March, work on the building addition has progressed steadily. At the time of writing this report, all work associated with the exterior masonry, siding, stucco, flooring, clock tower, doors, and windows are anticipated to be completed by March 31, 2023.

As stated in previous reports, an energy recovery ventilator (ERV) unit that is to be a part of the addition's new HVAC system experienced delays due to extreme supply chain issues and is estimated to be delivered on April 19, 2023. Therefore, the remainder of the mechanical and electrical work will be completed at that time. The addition will still be functional without the ERV unit and therefore can be used for its intended purpose.

The geotechnical issues and foundation redesign previously reported to Council resulted in an additional 15 working days required to obtain substantial completion. Poor weather conditions and other minor design changes, combined with the geotechnical issues have resulted in a total of 24 additional working days being required to achieve substantial completion.

As per the funding agreement the Town has in place with the Federal Development Agency for Southern Ontario, the mandatory substantial completion date for the project is March 31st, 2023, at the latest for the Town to receive the full funding amount of \$750,000. After a review of the construction schedule, and conversations with the contractor and the architect, the substantial completion date for the

project has been set for March 31st, 2023. At this point, the building will be functional and will be able to be used for its intended purpose.

Financial Considerations:

The original tender amount of the project is \$1,824,000 (plus applicable taxes), and the original value of the contract the Town has with the architect for contract administration services is \$82,346 (plus applicable taxes), for a total project cost of \$1,906,346 (plus applicable taxes). Since the start of construction, there have been additional costs to the project in the amount of \$127,407 (plus applicable taxes) for construction, and \$9,350 (plus applicable taxes) for contract administration, resulting in a combined \$136,757 (plus applicable taxes) in additional costs to the project. 58% or \$79,771 of the combined additional costs are a result of the work required for geotechnical issues and foundation redesign. The remainder of the additional costs is attributed to minor revisions to the designs based on in-field observations, such as the rerouting of the existing sanitary lateral and installation of a manhole to reduce the number of bends in the lateral, provide better access for cleaning and maintenance, and reduce the probability of sewer backups. The design for the roof stormwater leaders was also revised to connect directly to manholes instead of allowing stormwater to flow overland, therefore reducing the ponding and mud generated during wet weather events, and preserving the landscaping of Peace Park.

Alternatives Reviewed:

No alternatives have been reviewed for the purpose of this report.

Strategic Plan Relationship: Strong Organization

The addition will provide permanent public washrooms, an indoor community event space, and a storage room, which will greatly improve the community events at Peace Park and Town Hall.

Consultation:

Consultation was undertaken with Grguric Architects Inc., Bromac Construction Inc., and Hallex Engineering Ltd. in preparation of this report.

Other Pertinent Reports/Attachments:

APPENDIX A – Municipal Building Addition Progress Photos

2023-0049-Public Works – Town Hall Building Addition February Update

2023-0010-Public Works – Town Hall Building Addition January Update

2022-0271-Public Works – Town Hall Building Addition December Update

2022-0242-Public Works – Town Hall Building Addition Update

2022-0174-Public Works – Capital Projects Budget Exceedance

Prepared and Recommended by:

Lucas Smith, B. Eng., E.I.T.
Engineering Technologist

Jason Marr, P. Eng.
Director of Public Works

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer

Pelham Municipal Building Addition

2022-PW-16-1

20 Pelham Town Square, Fonthill, ON L0S1E0

Building Progress Pictures from March



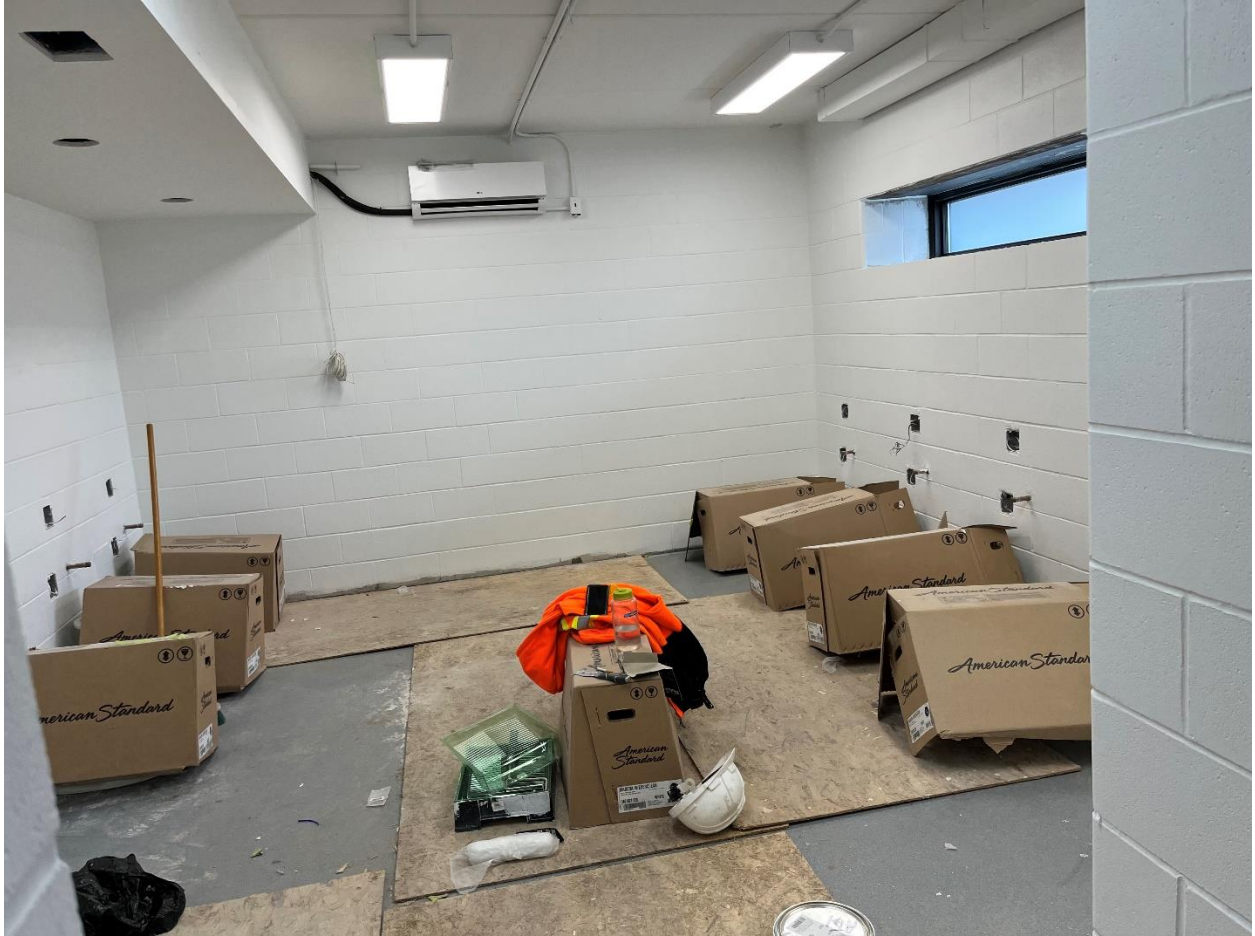
Architect's rendering of the finished product



Building exterior with masonry and stucco, awaiting siding



Epoxy floor installed



Toilets installed in the women's bathroom



Window and doors installed in Council Chambers



Main corridor of the addition awaiting ceiling tile installation

Memo

To: Mayor and Council

From: Barbara Wiens, MCIP, RPP
Director of Community Development and Planning

Date: April 5, 2023

RE: Official Plan Review and Update

BE IT RESOLVED THAT Council receive the Memo – Official Plan Review and Update, for information.

The Town Official Plan was adopted by Council in April 2012 and approved in March 2014. Since the approval of the Official Plan, 18 amendments have been made to the Plan. The Town is in the process of conducting an Official Plan review and update in accordance with the requirements of the *Planning Act* that will lead to the preparation of new Official Plan. As part of that process, the Town has retained WSP to conduct the conformity review of the existing Official Plan which is to identify and provide recommendations on where the Official Plan needs to be updated to conform to:

- provincial legislation including recent changes made to the *Planning Act* and other legislation
- Provincial Policy Statement 2020
- Provincial Plans including the Growth Plan for the Greater Golden Horseshoe (2020), Greenbelt Plan (2017) and Niagara Escarpment Plan (2017) and
- The recently approved Region of Niagara Official Plan (2022).

It is anticipated that WSP will have the conformity review completed and a draft conformity report prepared by the end of April 2023. The conformity review will include a review of the Town community profile, assess various policy drivers, and identify policy conflicts, gaps, and opportunities. The conformity report will be shared publicly with the community and with various agencies, i.e., Region of Niagara, Niagara Peninsula Conservation Authority, etc., for review, input, and comment. A presentation to Council by the consultants will also occur in late spring. The conformity report will ultimately form the basis for the preparation of a new Official Plan.

Also in April, staff will launch a public engagement page on the Engaging Pelham website. Content will include reports and updates on the Official Plan review and updating process and solicit public feedback as well. The conformity report will be available on this public engagement page, along with future drafts of the Official Plan. Staff intend to have information available for the public on how to participate and

engage in the process at the Home Show on April 15th and 16th. Future open houses, other public engagement touchpoints and reporting to Council will be scheduled as the process unfolds.

Subject: Single Source Architect for Centennial Park Accessible Universal Washroom Addition to Concession

Recommendation:

BE IT RESOLVED THAT Council receive Report #2023-0084 - Single Source Architect for Centennial Park Accessible Universal Washroom Addition to Concession, for information.

Background:

The 2023 Capital Budget has approved project FAC 06-23 Centennial Park Concession Design and Construction for \$185, 000 pending grant approval of \$150,000.

The Town has received notification that there are two grants have been approved for a total \$250,000 for the Centennial Washroom renovations. The announcement of these grants still need approval from the funding agents. The completion date of these grants is December 31, 2023.

Analysis:

The grant applications included a conceptual design by Grguric Architects Incorporated. The Town procured Grguric Architects since they have a lot of experience with outdoor park washrooms. There was a very tight timeline to obtain this conceptual design and submit the grant applications. Grguric Architects were able to meet this deadline.

Grguric Architects have completed many studies, renovations, and new builds for the City of Hamilton Park facilities. They are also the architect for the Town of Pelham for the current Town hall addition.

The following is a list of recently completed washroom/concession facilities in Hamilton:

1. City of Hamilton – Mountain Drive Park Facility Field House Renovations – 2021

2. City of Hamilton – Trieste Bocce Pavilion Study - 2019
3. City of Hamilton – Mount Hope Park Facility Study – 2019
4. City of Hamilton – Durand Park new Barrier-free Washroom Facility – 2018
5. City of Hamilton – Turner Park new Barrier-free Washroom Facility – 2018
6. City of Hamilton – Trenholme Park Washroom and Storage Facility – 2016 construction completed. Study was done 2015.
7. City of Hamilton – Bobby Kerr Park Washroom and Concessions Facility – 2016 construction completed. Study was done 2015.
8. City of Hamilton – William Schwenger Park Washroom Facility – 2016 construction completed. Study was done 2015. (see attached data sheet for combined sites)

Grguric Architects is one of 4 firms retained by the City of Hamilton through their vendor of record roster and as such they have a significant amount of municipal experience.

Schedule H of Town's Procurement Policy – Purchasing Goods and Services, Policy No. S402-00, defines Single Source as a non-competitive procurement method in which a Purchase is directed to one source of supply, supported by a sound business case, notwithstanding that other competitive sources may be available and capable of providing Goods and Services within the necessary timeframe. The above service from Grguric Architects meets the definition of Single Source as it is important for the Town to meet the tight timeline for the grant at a reasonable price.

Grguric Architects have the knowledge and expertise to complete this project successfully. Given the tight timelines associated with the grant and given that Grguric Architects were retained to complete conceptual plans for the grant submission staff are recommending the award of the design and contract administration and inspection to this firm.

The Treasurer and Town Solicitor have authorized this Single Source procurement from Grguric Architects Incorporated.

Financial Considerations:

The quote from Grguric Architects Incorporated is \$32,500. Per discussion with the Director of Public Works, this amount is reasonable. The grants will fully fund this fee, so there is no cost to the Town.

The original approved budget of \$185,000 had a Town contribution of \$35,000. Now with the awarding of two grants equaling \$250,000, it will allow the Town to fully fund the project and allow for completely upgrading the washrooms with AODA standards and addressing the awing issue for the Fenwick Lions at the concession stand.

Alternatives Reviewed:

Council may direct staff to complete a competitive Request for Proposal (RFP) process. Staff does not recommend this course of action given the tight timelines associated with the grants for completion of the project on December 31st, 2023.

Strategic Plan Relationship: Build Strong Communities and Cultural Assets

Adding a universal washroom and renovating the existing washrooms at Centennial Park will meet the accessibility needs of the residents using the Town washroom facilities at Centennial Park. This will also address the awning request from Fenwick Lions addressing the sun issues at their concession stand.

Consultation:

Director of Public Works

Town Solicitor

Other Pertinent Reports/Attachments:

Appendix 1: Quote from Grguric Architects Incorporated

Prepared and Recommended by:

Teresa Quinlin-Murphy, FCPA, FCA, MBA
Director of Corporate Services & Treasurer

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer



March 21, 2023 by email

2023-P15r1

Lucas Smith, B. Eng., E.I.T.
Town of Pelham

Re: Proposed Centennial Park Facility Renovations + Addition
999 Church Street, Fenwick, ON
Architectural / Engineering Services Proposal

We are pleased to submit our fee proposal for the proposed above noted project. We understand the project to consist of the washroom renovations to the existing Male and Female facilities and the addition of a Universal Washroom. The front concession space will also receive a new covered canopy area. The scope of work to the facility will consist of the following items:

Renovations to the existing Centennial Park facility will include the following items:

1. Extend canopy approx. 12 feet in front of concession stand to provide shade covering.
2. Add lighting to extended canopy.
3. Add new concrete pad at extended canopy.
4. Add new lights in existing covered seating area.
5. Add soffit ceiling in exiting covered seating area.
6. Add new soffits to all overhangs.
7. Aluminum clad existing wood beams at covered seating area – both sides.
8. Add architectural feature at concession stand split rib block and add new stainless steel extended countertop at existing shutter opening.
9. Add architectural feature below side counter at “taking orders” concession stand.
10. Paint entire building. Allow for some block wall repairs as required.
11. Add metal cladding to underside of gable end of roof both ends.
12. Existing shingle roof to remain as is.
13. Add RWL and eaves trough to rear of building along tennis court fence.
14. Washroom renovations includes, new lighting, new ceiling hung solid phenolic toilet partitions (add block partitions as stall dividers, new plumbing fixtures.
15. Add new electric hand dryers to both washrooms.
16. Washroom floor to receive epoxy coating.
17. Washrooms to receive new ceiling exhaust fans.
18. Washroom lights to be on motion sensors for activation.
19. Construct new Universal Washroom facility addition.
20. Add one additional sink in each washroom space to bring up to OBC requirements.

Scope of Services:

Our Fee proposal is based on our following scope of work as outlined below and the submitted RFP:

- i) Prepare a detailed review of the existing building to confirm plans are accurate.
- ii) Allow for two (2) design meetings to review concepts as prepared by GAI during the study phase of this project.
- iii) Review all building code issues relating to the expansion.
- iv) Retain structural, mechanical and electrical engineering consultants to prepare design and construction drawings along with construction administration.
- v) Connect new sanitary to the existing underground sanitary piping.
- vi) Prepare site plan.
- vii) Assist owner is obtaining soil report for proposed addition during construction if required.
- viii) Prepare full permit documents including architectural/engineering drawings and specifications for submission to local building department.



**GRGURIC
ARCHITECTS
INCORPORATED**

28 KING STREET EAST, UNIT B
STONE CREEK, ON, L8G 1J8
TEL. 905-664-8735
FAX. 905-664-8737
office@2gai.com www.2gai.com

- ix) Respond to any RFI's and addenda items turning tendering.
- x) Provide construction administration for the duration of the project. Consisting of shop drawing review, response to RFI's and Change Order issuance, etc.
- xi) Provide for up to five (5) on site review visits and reports by GAI. Additional meetings will be \$600 at owner's request.
- xii) Allow for up to two (2) site reviews and visits by our engineering consultant.
- xiii) Prepare final review report for occupancy as per the submitted permit drawings.

Work Not Included

- i) All disbursements, such as courier, travel (0.50/km) and printing.
- ii) Design revisions requested by owner after sign-off will be on an hourly basis.
- iii) All costs such as, Building Permit and any other jurisdictional charges associated with this development. Any variances or committee of adjustment requirements.
- iv) Assume no site plan approval will be required as this is deemed a minor addition. GAI to review.

Professional Fees:

Architectural fee				\$22,000	
Engineering Consultants					
Structural Engineering - DFE Engineering				\$3,900	
Mechanical & Electrical Engineering - JT Niagara Design Inc.				\$6,000	
Disbursements - Allowance				\$600	
				\$9,900	
Total Fee				\$32,500	plus HST

If additional services will be requested or required for the above and beyond listed scope of work, our fee will be based on the following hourly rates:

Principal Architect/Engineer \$190/hr Project Architect \$150/hr Tech: \$95/hr Clerical: \$75/hr

Acceptance:

The terms of this proposal have been accepted by _____ on _____ 2023.

Signature: _____

Thank you once again for asking GAI to provide you with a fee proposal for the above noted project. Should you have any questions please do not hesitate to contact me.

Sincerely,

GRGURIC ARCHITECTS INCORPORATED

John Grguric, Architect, OAA

Subject: Single Sourcing - Ward Boundary and Council Composition Update and Selection Process for Deputy Mayor

Recommendation:

BE IT RESOLVED THAT Council receive Report #2023-0090 – Single Sourcing – Ward Boundary and Council Composition Update and Selection Process for Deputy Mayor, for information.

Background:

The Town of Pelham was established in 1970 with a three (3) ward system. Minor ward adjustments were completed in 1978.

In 2013 the Town of Pelham underwent a boundary review which was completed by Watson and Associates. The report from Watson and Associates in 2013 cost approximately \$20,453.00.

In 2011 the Town of Pelham's population was 16,598. In 2013 the Town of Pelham's population was 17,110. In 2021 the Town of Pelham's population was 18,192. The Town has seen significant growth over the last decade; however, the growth has not been evenly distributed amongst the three wards. For various reasons the majority of growth has taken place in the settlement areas, primarily Fonthill.

Council considered a report on ward distribution in October of 2022 at the Council Meeting on December 5th, 2022, changes were made to the appointment process and term of office for the Deputy Mayor, which now is a two-year appointment.

Council also approved funding within the 2023 operating budget that includes project number PLN 04-23, Ward Boundary and Council Composition Update and Selection Process for Deputy Mayor ("the study"), in the amount of \$51,000.00. The amount of this budget item, which has been approved, was provided by Watson and Associates.

Analysis:

Staff understand that any proposed changes adopted based on the study will necessarily garner public attention and participation. As a result, it is important that

the study and community consultations take place as early as possible in this term so as to provide enough time for Council to digest the information and make an informed decision prior to the next election cycle. Staff therefore intend to proceed with the study without delay.

As Watson and Associates not only undertook the last comprehensive boundary review, but have also provided the estimate for a renewed study, staff believe there is a strong benefit in sole sourcing the project.

This will ensure timely undertaking and completion of the study, and an assurance, barring any unseen issues, that the project will fall within the budgeted parameters.

Under the Town's Procurement Policy this qualifies as a Non-Competitive Procurement from a Single Source. Schedule "H" of the Procurement Policy defines Single Source procurements as follows:

Single Source: A procurement method in which a Purchase is directed to one source of supply, supported by a sound business case, notwithstanding that other competitive sources may be available and capable of providing the Goods or Services within the necessary timeframe.

Schedule "H" authorizes the Treasurer and Town Solicitor to approve Single Source procurements where these requirements are met. For the reasons set out above, the Treasurer and Town Solicitor have authorized the engagement of Watson and Associates as a Single Source procurement to conduct the study, provided confirmation that the budget estimate approved by Council has not changed.

Financial Considerations:

The project has been approved in budget and moving forward with a Single Source procurement should provide the necessary assurances that the project will be delivered in a timely manner and within the budget estimate approved by Council.

Alternatives Reviewed:

Staff considered preparing a Request for Proposal and soliciting bids from other firms. However, doing so would require staff to prepare a comprehensive RFP to ensure that the end product will meet the needs and expectations of Council. This process would take time to develop the proposal, evaluate, award and commencement of the study.

Although this would be a reasonable approach, it would significantly impact the timing of the study. This might in turn impact the ability for Council to implement any chosen changes as part of the 2026 election cycle.

Realistically, with a fully competitive process there would be the potential for other firms to submit Proposals either less than the budgeted amount or in excess of the budgeted amount. However, with Watson and Associates' history and understanding of the community, along with a firm budget estimate, staff believe it is a sound approach.

Strategic Plan Relationship: Strong Organization

Regularly reviewing the Town's ward boundaries and Council composition leads to building a strong organization by ensuring democratic representation is fair amongst the residents of Pelham. This will uphold a fundamental democracy principle of representation by population.

Conducting such reviews demonstrates the Town's commitment to the democratic and electorate process.

Consultation:

The Treasurer, Town Solicitor and Chief Administrative Officer were consulted about the appropriateness and desirability of moving forward with a Single Source procurement.

Other Pertinent Reports/Attachments:

None.

Prepared and Recommended by:

William Tigert
Town Clerk

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer

From: [Usick, Karen](#)
To: [wayne.redekop@niagararegion.ca](#); [marvin.junkin@niagararegion.ca](#); [Brian.Grant@niagararegion.ca](#); [frank.campion@niagararegion.ca](#); [bill.steele@niagararegion.ca](#); [Jdiodati@niagarafall.ca](#); [sandra.easton@niagararegion.ca](#); [jeff.jordan@niagararegion.ca](#); [terry.ugulini@niagararegion.ca](#); [Mathew.Siscoe@niagararegion.ca](#); [Gary.Zalepa@niagararegion.ca](#); [Cheryl.Ganann@niagararegion.ca](#); [jim.bradley@niagararegion.ca](#); [Diodati,Jim](#)
Cc: [dkelley@forterie.ca](#); [Sarah Leach](#); [adashwood@wainfleet.ca](#); [theresa.ettorre@welland.ca](#); [nancygiles@portcolborne.ca](#); [kelia@niagarafalls.ca](#); [achambers@lincoln.ca](#); [hsoady-easton@grimsby.ca](#); [ginger@thorold.com](#); [jhughes@stcatharines.ca](#); [victoria.steele@notl.com](#); [Jthrower@westlincoln.ca](#); [erica.pretty@notl.com](#); ["BHutchinson@westlincoln.ca"](#); [Belinda Ravazzolo](#); [mciuffetelli@wainfleet.ca](#); [Rachael.Babirad@welland.ca](#); [brendaheidebrecht@portcolborne.ca](#); [sconidi@niagarafalls.ca](#); [RMunroe@forterie.ca](#); [mciuffetelli@wainfleet.ca](#); [brenda.larouche@welland.ca](#); [Tessa Buonocore](#); [nancygiles@portcolborne.ca](#); [Jacquie Miller](#); [kelia@niagarafalls.ca](#)
Subject: Proclamation Request - Canadian Viral Hepatitis Elimination Day (Can Hep Day)
Date: Friday, March 17, 2023 3:53:15 PM
Attachments: [Canadian Viral Hepatitis Elimination Day Proclamation - Bilingual \(St Catharines - 2023\).docx.pdf](#)
[Canadian Viral Hepatitis Elimination Day Proclamation - Bilingual \(Port Colborne - 2023\).docx.pdf](#)
[Canadian Viral Hepatitis Elimination Day Proclamation - Bilingual \(Pelham - 2023\).docx.pdf](#)
[Canadian Viral Hepatitis Elimination Day Proclamation - Bilingual \(NOTL - 2023\).docx.pdf](#)
[Canadian Viral Hepatitis Elimination Day Proclamation - Bilingual \(Niagara Falls - 2023\).docx.pdf](#)
[Canadian Viral Hepatitis Elimination Day Proclamation - Bilingual \(Fort Erie - 2023\).docx.pdf](#)
[Canadian Viral Hepatitis Elimination Day Proclamation - Bilingual \(Grimsby - 2023\).docx.pdf](#)
[Canadian Viral Hepatitis Elimination Day Proclamation - Bilingual \(Lincoln - 2023\).docx.pdf](#)
[Canadian Viral Hepatitis Elimination Day Proclamation - Bilingual \(West Lincoln - 2023\).docx.pdf](#)
[Canadian Viral Hepatitis Elimination Day Proclamation - Bilingual \(Welland - 2023\).docx.pdf](#)
[Canadian Viral Hepatitis Elimination Day Proclamation - Bilingual \(Wainfleet - 2023\).docx.pdf](#)
[Canadian Viral Hepatitis Elimination Day Proclamation - Bilingual \(Thorold - 2023\).docx.pdf](#)

Greetings everyone

I am touching base on behalf of the Niagara Health System's – Hepatitis C Care Clinic to share with you about how we will be joining our national partners to raise awareness of viral hepatitis. In May 2016, Canada signed on to the World Health Organization (WHO)'s first ever Global Viral Hepatitis Strategy, with the goal of eliminating viral hepatitis as a public health threat by 2030. On Wednesday May 11, 2022, Action Hepatitis Canada was joined by CanHepC, CanHepB, the Canadian Liver Foundation . . . and the Canadian Association for the Study of the Liver to mark the inaugural "Canadian Viral Hepatitis Elimination Day / Can Hep Day" in Ottawa. To support the global strategy, all provinces and communities across Canada are working together to raise awareness. On May 11, 2023, The Hepatitis C Care Clinic will be joining our national partners to raise awareness of "Can Hep Day" here in Niagara. Our program will be hosting our inaugural Canadian Viral Hepatitis Elimination Day (Can Hep Day) to raise awareness of hepatitis and liver health. The Hepatitis C Care Clinic community awareness event will encourage individuals to learn about hepatitis, liver health, how to receive hepatitis C testing, hepatitis C treatment ... and the care and services of our program. In addition, our community partners will be joining us at our street-based health and social services fair, which take place at St. Andrews United Church-5645 Morrison

Street, Niagara Falls from 11:00 am. To 3:00 pm. Event attendees will learn about the care and services of the Hepatitis C Care Clinic . . . and the care and services of our community partners.

Are you wondering how you can help! We are inviting you to join with our awareness campaign and national partners to proclaim Thursday May 11, 2023, as Canadian Viral Hepatitis Elimination Day throughout the 12 municipalities of Niagara. Together we are strong . . . we can join together to raise awareness and to help the residents throughout Niagara. If you have any questions, or require further information, please do not hesitate to contact me!

Hope you have a lovely afternoon and a wonderful weekend!

Take care and stay safe!

Karen

Karen Usick – Reg. N

Hepatitis C Care Clinic | Community Coordinator

Niagara Health System | Addiction Services

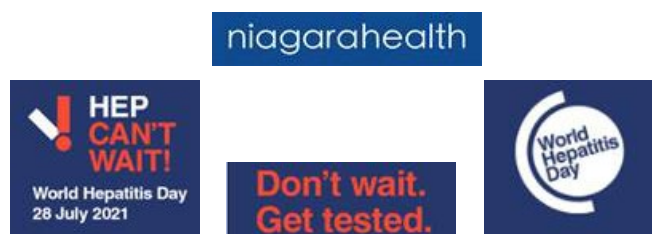
Karen.Usick@NiagaraHealth.on.ca

W: 905-378-4647 x32555 | C: 289-696-2523

260 Sugarloaf Street, Port Colborne, ON L3K 2N7

HCCC Website Address - www.niagarahealth.on.ca/site/hepatitis-c-care

NHS Addiction Services - www.niagarahealth.on.ca/services/addiction-recovery



#HepCantWait | #WorldHepatitisDay | #NoHep

Canadian Viral Hepatitis Elimination Day

May 11, 2023

WHEREAS hepatitis B and C are among Canada's most burdensome infectious diseases – measured in liver damage, cancer, lives lost, and significant costs to our public healthcare system;

AND WHEREAS more than 204,000 people in Canada are living with hepatitis C, and more than 250,000 are living with hepatitis B;

AND WHEREAS hepatitis C is curable, and hepatitis B is vaccine-preventable and treatable;

AND WHEREAS Canada has committed to eliminating viral hepatitis as a public health threat by 2030;

AND WHEREAS Canadian Viral Hepatitis Elimination Day provides an opportunity to highlight the need for policies that support easy access to testing, treatment, and care for those affected, paving the way toward elimination;

THEREFORE, BE IT RESOLVED THAT the Corporation of the Town of Pelham does hereby proclaim May 11, 2023, as Canadian Viral Hepatitis Elimination Day.

DATED AT the Town of Pelham this 05th day of April, 2023.

Mayor Marvin Junkin
Town of Pelham



4800 SOUTH SERVICE RD.,
BEAMSVILLE, ON L3J 1L3

905-563-2799

March 10, 2023

Sent via email: minister.edu@ontario.ca

The Honourable Steven Lecce,
Minister of Education
Ministry of Education
315 Front Street West, 14th Floor
Toronto, ON M7A 0B8

Dear Minister Lecce:

RE: Town of Lincoln Council Resolution – Ontario School Board Elections

Please be advised that Council of the Corporation of the Town of Lincoln at its Council Meeting held on March 6, 2023, passed the following motion:

Resolution Number: RC-2023-24

Moved by: Councillor JD Pachereva; Seconded by Councillor Greg Reimer

That Council receive and file for information, correspondence from the Town of Essex dated February 13, 2023 and Town of Deep River dated February 16, 2023, regarding Ontario School Board Elections; and,

That Council of the Town of Lincoln support the correspondence items to request that School Boards become responsible for conducting their own Trustee elections or at a minimum municipalities be compensated by the School Boards for overseeing such Trustee elections; and,

That staff forward this Resolution to the Town of Essex, Town of Deep River, the Honourable Steven Lecce, Minister of Education, MP Sam Oosterhoff, and to Ontario Municipal Councils.

CARRIED

If you have any questions, please do not hesitate to contact the undersigned.

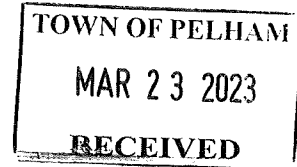
Regards,

Julie Kirkelos
Town Clerk

jkirkelos@lincoln.ca

JK/dp

c.c. Town of Essex
Town of Deep River
Sam Oosterhoff, MPP Niagara West Sam.Oosterhoffco@pc.ola.org
Ontario Municipal Councils



To the Clerk and Council,

Re: Open Meetings: Guide for Municipalities

I am pleased to send you the latest edition of the Ontario Ombudsman's open meeting guide for municipalities. This guide offers tips and information about Ontario's open meeting rules, based on our Office's past 15 years of experience in investigating complaints about closed municipal meetings.

We have designed this portable, bilingual guide to serve as a handy reference for council members and other municipal officials when dealing with questions about the open meeting exceptions in the *Municipal Act, 2001*, as well as various common procedural issues. It includes frequently asked questions, excerpts from relevant legislation and best practice suggestions. This version includes updated case examples from our investigations and reflects the legislative change that permits councils, local boards, and committees to hold fully electronic or virtual meetings.

As we have done since 2008, our Office is providing this guide for free to all municipal clerks and council members across the province, whether they use the Ombudsman as their closed meeting investigator or not. We do this in the spirit of the open meeting rules – to promote transparency in local governments across the province.

If you require additional printed copies, please contact us at thewatchdog@ombudsman.on.ca. You can also print more copies directly from our website, or view the accessible PDF version, at www.ombudsman.on.ca/resources/brochures-and-posters/municipal-resources.

This link will also take you to our other municipal resources, including tip cards, best practice guidelines, and our online resource, **Open Meetings: Case Digest**, where you can search hundreds of our decisions on open meeting cases by topic, keyword, or municipality.

We hope these resources will be useful to you and the public we all serve.

We welcome your feedback, or any questions you might have about any aspect of our work: Please feel free to contact us at info@ombudsman.on.ca or 1-800-263-1830.

Sincerely,

Paul Dubé
Ombudsman of Ontario

Encl.

Open Meetings

Guide for Municipalities

INFORMATION AND BEST PRACTICES

FIFTH EDITION

Independent Impartial Confidential Free

Page 92 of 295

1-800-263-1830

Top 10 tips for municipal officials

1. Make a commitment to open government and to promoting transparency, accountability and accessibility.
2. Know and follow the *Municipal Act, 2001* and your procedure by-law's open meeting requirements.
3. Make sure you have a procedure by-law that complies with the *Municipal Act, 2001* – every municipality and local board is required to have one.
4. Give adequate advance public notice of all meetings, including the time and location of all meetings. For electronic meetings, provide access instructions (including a link), monitor broadcast quality throughout the meeting, and have a plan to stop the meeting if there are technical issues.
5. Keep meetings open to the public unless closure is specifically authorized under the *Municipal Act, 2001* and there is a real need to exclude the public.
6. Pick the right s. 239 exception before closing a meeting.
7. Pass a resolution in public that includes meaningful information about the issue to be considered (not just the exception) *before* closing the doors.
8. Record the meeting, including all decisions, by taking minutes, and preferably also by recording audio or video.
9. Do not hold a vote in closed session unless it is for a procedural matter or to give directions to staff or officials.
10. To the extent possible, report back publicly in open session about what occurred in closed session.



TABLE OF CONTENTS

Message from the Ombudsman.....	2
Ontario's open meeting requirements.....	4
The Ombudsman and closed meeting investigations	13
Exceptions to the open meeting rules	17
Excerpts of relevant legislation	33
Making a complaint.....	42

Copyright 2023, Ombudsman of Ontario (previously published as *The Sunshine Law Handbook*, editions in 2008, 2009 and 2014, and as *Open Meetings: Guide for Municipalities* in 2019).

This guide, along with the Ombudsman's open meeting reports and letters, can be downloaded and printed from the Ombudsman's website, www.ombudsman.on.ca. To request hard copies, email thewatchdog@ombudsman.on.ca.

See also the regularly updated digital **digest of open meeting cases** on the Ombudsman's website to search cases by subject, municipality or keyword, www.ombudsman.on.ca/digest.

Please note that this guide is provided for information purposes only and should not be considered or relied upon as legal advice.

Message from the Ombudsman

Government transparency and the ability to observe the political process are foundational to democracy. To that end, local governments must comply with the open meeting rules in the *Municipal Act, 2001*. It is imperative that municipal councils and staff understand these legal requirements, and that they build best practices for compliance into their procedures.

My team and I are committed to helping municipal staff and councils in that regard. This guide is intended as a quick reference to Ontario's open meeting rules, as set out in legislation. The guiding principle has always been that municipal councils must meet in public, except in certain specific circumstances. The spirit of the law can be summed up in six words: **When in doubt, open the meeting.**

Municipalities have been required to hold open meetings throughout Ontario's history – and rightly so, given the importance of local governments to our everyday lives. However, members of the public had little recourse to question meetings that were closed to the public until a complaints system was established in 2008.

Since then, all municipalities have been required to have an investigator to deal with complaints about closed meetings and determine whether or not the open meeting rules were violated. The Ombudsman is the investigator for all municipalities that have not appointed their own.

Over the years, this Office's hundreds of investigations and reports have made a significant contribution to the field of what many jurisdictions call "sunshine law." In

some cases, we validate the actions of municipal officials, while in others we provide constructive feedback on how to optimize compliance with the rules.

Recognizing the evolving challenges that municipalities face, we keep this informative guide updated regularly and provide it to all municipal clerks and council members, whether or not they use the Ombudsman as their investigator.

To further assist municipal officials in fulfilling their transparency obligations, we have also created a searchable, regularly updated digital digest of our open meeting cases. Our **Open Meetings Case Digest**, available on our website, can be searched by topic, keyword and municipality, and is the first such resource of its kind in Ontario.

Both of these tools are intended to promote transparency and facilitate compliance with the *Municipal Act, 2001* in communities across the province.

On that note, I want to remind all Ontarians that our Office can also help them with general complaints about municipalities or any of the more than 1,000 provincial government and broader public sector bodies that we oversee. Please feel free to consult our website or call our staff at 1-800-263-1830 to find out how we can help.



Paul Dubé
Ombudsman of Ontario



Ontario's open meeting requirements

GENERAL QUESTIONS

What are the objectives of the open meeting rules?

The open meeting requirements set out in section 239 of the *Municipal Act, 2001* **permit the public to observe municipal government in progress**. The Supreme Court of Canada answered this question in its decision in the 2007 case, *London (City) v. RSJ Holdings Inc.* The judges noted “the public’s demand for more accountable municipal government” and stated that open meetings are essential to “robust democratic legitimacy” of local administrations. They also observed that s. 239 of the *Municipal Act, 2001* “was intended to increase public confidence in the integrity of local government by **ensuring the open and transparent exercise of municipal power**.”

Must all municipal meetings be open to the public?

Yes, **with some limited exceptions**. The Act recognizes that there may be situations in which the privacy of an individual should be respected, or where open meetings would not serve the public interest or the interests of the municipality.

If a subject fits within one of the exceptions, it can be discussed in a closed meeting, provided that the municipality follows all the procedural rules, including giving notice of the meeting, passing a resolution in public to close the meeting, and keeping minutes of the closed meeting. During the closed meeting, the discussion should stay on topic and be limited to the subject area stated in the resolution.

What are the exceptions?

A municipal or local board meeting, or part of a meeting, **may be closed** to the public if the subject of the meeting falls within one of the **14** exceptions set out in s. 239 of the Act. In brief, these include matters that relate to:

- The security of the property of the municipality
- Personal matters about an identifiable individual
- Acquisition or disposition of land
- Labour relations
- Litigation
- Advice subject to solicitor-client privilege
- Information supplied in confidence to the municipality by another level of government
- A trade secret or certain specific information supplied in confidence to the municipality, or that belongs to the municipality and has monetary value
- A plan or instruction to be applied to negotiations
- Education or training

For more on the exceptions, see pages 17-32, the section “Exceptions to the open meeting rules.”

Must meetings be closed if they fall within those exceptions?

Not always. In fact, 12 of the 14 exceptions are **discretionary**, meaning that whenever possible, municipalities should opt to discuss these subjects in public, in the interest of transparency. The legislation leaves them the flexibility to **keep the doors open**.

The two exceptions that state meetings **must** be closed relate to:

- Requests under the *Municipal Freedom of Information and Protection of Privacy Act*
- An ongoing investigation by the Ontario Ombudsman or the municipality’s closed meeting investigator or local ombudsman

TERMS AND DEFINITIONS

What is a “meeting”?

The *Municipal Act, 2001*, s. 238(1) defines “meeting” as any regular, special or other meeting of a council, of a local board or of a committee of either of them, where:

- a) A quorum of members is present, and
- b) Members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board, or committee.

To determine whether a discussion “materially advances” council business or decision-making, the Ombudsman considers the extent to which the discussions moved forward the business of the municipality. Discussions, debates or decisions that are intended to lead to specific outcomes are likely to materially advance business or decision-making, whereas mere receipt or exchange of information is unlikely to do so.

What is a “quorum”?

A quorum is the minimum number of members of a body **required to be present** at a meeting in order for a body to exercise its power or authority. Often, this number is 50% plus one, but quorum may be defined differently by legislation or by-law.

Does the term “meeting” include informal gatherings outside of council chambers?

Informal gatherings for social purposes are **not** considered to be “meetings.” However, if participants in the gathering **discuss business** of the council, local board or committee and/or make decisions, it is more likely to be deemed a “meeting” that is subject to the open meeting requirements.

The purpose of the open meeting rules is not to discourage council members from informal or social interactions, but to ensure such gatherings are not used as a pretext for conducting council business away from public view.

Can meetings be held electronically, including over teleconference or video conference?

Yes, the *Municipal Act, 2001* was amended in 2020 to permit councils, local boards, and committees to hold meetings electronically if permitted by their procedure by-law. This change was made in response to the COVID-19 pandemic, but has remained in the Act, giving municipalities more flexibility in their meeting styles.

All of the open meeting rules continue to apply to electronic meetings. Notice must be provided and should include directions for how the public can access the meeting, such as a link. Minutes must be recorded and a resolution must be passed in public before a meeting can be closed. Municipalities should monitor any broadcast or livestream to ensure that the meeting is stopped if there are technical issues, and should consider putting a back-up broadcast method in place.

What about meetings conducted informally over the phone, text or by email?

As the definition of meeting requires a quorum of members to be present, a meeting cannot occur over email or other remote forms of communication (except as permitted by a procedure by-law, as set out above).

Although emails and other remote forms of communication are not subject to the open meeting rules, municipalities should endeavour to apply consistent standards of transparency and openness, regardless of the means of communication. The open meeting rules call for discus-

sions that advance council business or decision-making to take place in public. Any exchange wherein council votes, reaches consensus, provides direction or input to staff, or discusses or debates a proposal, course of action or strategy should be reserved for official meetings of a council, local board, or committee.

What is a “committee”?

For the purposes of the open meeting provisions, a committee is defined as **any advisory or other committee**, subcommittee or similar entity of which at least 50% of the members are also members of one or more councils or local boards. A procedure by-law can also designate certain bodies to be committees.

Committees must follow the open meeting rules, including providing public meeting notice, recording minutes, passing a resolution before closing a meeting, and restricting the discussion during the closed meeting to matters that fit within the exceptions. Municipalities should ensure all committee members receive support and training to enable them to comply with the rules.

What are “local boards”?

Local boards subject to the open meeting requirements include municipal service boards, transportation commissions, boards of health, planning boards, and any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities. For instance, the board of management for a business improvement area (BIA) is a local board.

Bodies that are **not** considered local boards under the *Municipal Act, 2001* and/or that are not subject to the open meeting requirements include:

- School boards
- Conservation authorities
- Police services boards

- Public library boards
- Hydro companies incorporated by municipalities under s. 142 of the *Electricity Act*
- Certain municipal corporations

In 2018, the Ontario Court of Appeal found that the City of Hamilton's Property Standards Committee and Election Compliance Audit Committee were not local boards for the purposes of the open meeting rules, because neither body provided "services which are integral to the day-to-day operation of the business" of the city. In 2021, Ontario's Divisional Court provided additional guidance, finding that the City of Hamilton's Lesbian, Gay, Bisexual, Transgender and Queer Advisory Committee was a local board. The decision noted that the function of the Committee related to the city's "affairs and purposes" by helping the city meet its obligations to all members of the community. The Court found the committee was not an "independent and/or adjudicative" body, and was also not an *ad hoc* informal committee.

Municipalities should assess all local bodies to determine if they might be a committee or local board. Remember: **When in doubt, open the meeting.**

PROCEDURE BY-LAWS AND PUBLIC NOTICE

What is a municipality required to address in its procedure by-law?

Every municipality and local board is required to **pass a procedure by-law** governing the calling, place and proceedings of meetings. The procedure by-law must also provide for **public notice** of meetings. This should set out the method of giving notice and how far in advance the notice will be given. For example, it might specify that notice of a meeting shall be provided 72 hours in advance by posting the agenda on the municipality's website.

If a municipality chooses to hold electronic meetings, it must provide for that practice in its procedure by-law.

When a municipality decides to close a meeting or part of a meeting, it has to comply not only with the requirements of the *Municipal Act, 2001*, but **also with any additional requirements of its procedure by-law**.

What specific procedure must be followed to close a meeting?

The municipality, local board, or committee must state **by resolution in open session** that a closed meeting will be held and state the general nature of each matter to be considered at the closed meeting. The resolution authorizing a closed meeting must be made in advance and the public must be able to observe its passage in real time (even if the meeting is being held electronically).

The resolution to go into a closed meeting should provide a **general description of the issue** to be discussed in a way that maximizes the information available to the public **while not undermining the reason for excluding the public**. When meetings are closed for the purpose of **educating or training** members, the relevant subsection of the Act must also be cited. However, as a best practice, the relevant exceptions **should always be indicated in the resolution**, in addition to each subject for discussion. The resolution should clearly identify which exception pertains to which subject.

What information should be included in a public notice of a meeting?

The *Municipal Act, 2001* requires municipalities to establish a procedure by-law that provides for public notice of meetings, but the Act **does not specify the notice content**. This should be set out in the municipality's procedure by-law.

For example, many procedure by-laws require that an agenda be publicly posted in advance of a meeting.

listing the matters to be discussed. **Adequate notice should include the date, time and place of the meeting**, to facilitate the public's right to attend and observe. For electronic meetings, the notice should include access instructions, such as a link.

It is the Ombudsman's view that, wherever possible, advance public notice should include information about all open and closed portions of a meeting, and meaningful information about **all items to be considered**. The Ombudsman discourages the practice of having "standing" closed sessions and recommends that notices and agendas accurately reflect the specific matters intended to be discussed at a particular meeting.

VOTING AND RECORDS

Can votes be taken during a closed meeting?

Generally, meetings cannot be closed to the public during the taking of a vote. Voting in a closed meeting is only permitted if the closed meeting **is otherwise authorized and** the vote is for a **procedural matter** or for **giving directions or instructions** to officers, employees, agents of the municipality, or persons under contract. All votes should be taken formally, in accordance with the procedure by-law, and recorded in the closed meeting minutes. Decisions should **not** be made by straw poll, show of hands or general consensus.

Are members of the public entitled to participate in a meeting?

There is **no automatic right to speak or participate** in a meeting. There is a distinction between a citizen's right to participate and their right to observe municipal government in progress. The open meeting requirements set out in s. 239 of the *Municipal Act, 2001* permit the public to **observe the political process**.

Each municipality is required to have a procedure by-law, which may set out a process for members of the public to address council. Questions about the process should be referred to the municipal clerk.

Must a record be kept of the closed meeting?

All resolutions, decisions and other proceedings that take place must be recorded, **whether the meeting is open or closed.**

The Act does not require municipalities to create verbatim transcripts of meetings, but minutes should be more detailed than just a list of resolutions. The record of a closed meeting should include reference to the location, format (e.g., in person or electronic), time of commencing and adjourning the meeting, and the names of attendees. There should also be a detailed description of the substantive and procedural matters discussed, including reference to any specific documents considered, motions (including names of the movers and seconders), and all votes taken or direction given.

The Ombudsman recommends that all municipalities also make audio or video recordings of all meetings – open and closed – to ensure the most thorough record possible. After meeting behind closed doors, the Ombudsman recommends reporting back in the open session on what transpired in the closed session, providing as much detail as the subject matter permits.

The Ombudsman and closed meeting investigations

Who is the Ombudsman?

The Ombudsman is an impartial officer of the Ontario Legislature, independent of the government and all political parties. The Ombudsman resolves and investigates complaints from the public about the administrative conduct of provincial government organizations, municipal sector entities, publicly funded universities, and school boards, as well as complaints about the services provided by children's aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*. The Ombudsman's role and powers are set out in the *Ombudsman Act* and the *French Language Services Act*.

What does the Ombudsman do?

The role of the Ombudsman is to enhance governance by promoting transparency, accountability and fairness in government and the public sector, and the protection of French language service rights and the rights of children and youth in care.

Most of the Ombudsman's work involves receiving and assessing complaints in an impartial manner and resolving them informally wherever possible. The Ombudsman does not advocate for complainants and investigations are undertaken only when matters cannot be otherwise resolved. Investigations – including those that may involve broad systemic issues – are evidence-based and objective. When appropriate, the Ombudsman makes recommendations for constructive change.

Although the Ombudsman's recommendations are not binding, they have been overwhelmingly accepted and implemented, prompting significant bureaucratic reforms.

In the field of open meetings, the Ombudsman makes findings on whether or not municipal meetings complied with the open meeting rules, and may make recommendations or suggest best practices for improvement. Ombudsman staff who specialize in open meetings can also provide guidance and education to municipalities and members of the public on the open meeting requirements and best practices.

Who can complain about a closed meeting?

Anyone can file a complaint; it is not necessary to be a resident of the municipality in question.

Section 239.1 of the *Municipal Act, 2001* provides that a person may request an investigation into whether a municipality or local board has:

- complied with s. 239 of the Act (which sets out the open meeting requirements) or
- complied with the municipality's procedure by-law

in respect of a meeting or a part of a meeting that was closed to the public.

What does it cost?

The Ombudsman does not charge fees to complainants, or to any organization that is the subject of a complaint. Fees are discouraged by ombudsmen around the world because they can act as a barrier to legitimate complaints.

Are complainants identified?

No. Complaints to the Ombudsman are confidential, and **the identity of complainants is not released** in any of our cases without consent. The complainant's identity is not usually relevant to a closed meeting investigation, which focuses only on whether or not the meeting was closed according to the law.

Does the Ombudsman investigate closed meetings in all municipalities?

No. All municipalities must have a closed meeting inva-

tigator – either the Ombudsman or another investigator of their choice. If another investigator is appointed, the Ombudsman cannot review complaints about closed meetings in that municipality.

Anyone can find out who the investigator is for a particular municipality by consulting the database in our website's **Municipal Closed Meetings** section, by calling our Office, or by calling the municipality in question.

How are complaints about closed meetings different from complaints to the Ombudsman about other municipal issues?

The Ombudsman's role is to resolve and investigate complaints about entities within his jurisdiction, as an office of last resort. Complaints about municipalities can result in informal resolutions, referrals, best practice suggestions, or formal investigations and recommendations to improve and strengthen local governance and accountability.

This role is distinct from the Ombudsman's function as a closed meeting investigator, which focuses narrowly on whether or not the open meeting rules were followed. More information about our work on general municipal issues is available on our website and in the Ombudsman's reports, including Annual Reports and reports on specific municipal investigations.

What happens in a closed meeting investigation?

Our first step is to determine whether or not the Ombudsman is the closed meeting investigator for the municipality in question. If the municipality has appointed its own investigator, the complaint is referred accordingly.

If the Ombudsman is the investigator, our staff review the complaint, contact the municipality's clerk and obtain meeting documents and other relevant information for

the Ombudsman to determine whether an investigation is warranted.

If the Ombudsman decides to proceed with an investigation, the usual process involves the following:

- The municipality is notified in writing.
- Ombudsman staff gather relevant information, including interviewing witnesses and reviewing documents as warranted. (The *Ombudsman Act* requires that our investigations be conducted in private.)
- Based on the evidence gathered, the Ombudsman makes findings that are shared with the municipality before being made public.
- The Ombudsman's final letter or report is sent to the municipality, which is expected to make it public as soon as possible. It is also published on the Ombudsman's website, and complainants are informed of the outcome of the case.

If the investigation finds that the municipality violated the open meeting rules, the *Municipal Act, 2001* requires council or the local board to pass a resolution stating how it intends to address the report.

What are the consequences for the municipality?

Unlike in some U.S. jurisdictions, where breaking the open meeting laws can result in a fine or even jail time, there are no penalties in Ontario for holding an illegal closed meeting.

If the Ombudsman finds a municipality violated the open meeting rules, the municipality must make the Ombudsman's report public, and it must pass a resolution setting out how it intends to address the report. Ombudsman recommendations are not binding; it is up to the municipality to decide whether or not to accept and implement them.

Exceptions to the open meeting rules

GENERAL INFORMATION

All meetings of a council, local board, or committee of either must be open to the public, unless the subject matter fits within one of the 14 exceptions to that rule, identified in s. 239 of the *Municipal Act, 2001*. The exceptions should be interpreted narrowly.

Discretionary exceptions:

Twelve of the exceptions are discretionary, meaning it is not mandatory to close meetings to deal with these subjects. **When in doubt, open the meeting.**

Meetings may be closed if the discussion is about:

1. The security of the property of the municipality [s. 239(2)(a)]
2. Personal matters about an identifiable individual, including municipal employees [s. 239(2)(b)]
3. A proposed or pending acquisition or disposition of land by the municipality [s. 239(2)(c)]
4. Labour relations or employee negotiations [s. 239(2)(d)]
5. Litigation or potential litigation, including matters before administrative tribunals, affecting the municipality [s. 239(2)(e)]
6. Advice that is subject to solicitor-client privilege, including communications necessary for that purpose [s. 239(2)(f)]
7. A matter in respect of which a council, board, committee or other body may hold a closed meeting under another piece of legislation [s. 239(2)(g)]
8. Information supplied in confidence to the municipality by another level of government [s. 239(2)(h)]

9. Third-party information supplied in confidence to the municipality, which, if disclosed, could significantly prejudice a competitive position or interfere with negotiations (e.g., a trade secret or scientific, technical, commercial, financial or labour relations information) [s. 239(2)(i)]
10. Information (e.g., a trade secret or scientific, technical, commercial, or financial information) that belongs to the municipality and has monetary value [s. 239(2)(j)]
11. A position, plan, procedure, criteria, or instruction to be applied to negotiations [s. 239(2)(k)]
12. Educating or training members of the council, a local board or committee [s. 239(3.1)]

Mandatory exceptions:

The other two exceptions are mandatory. Meetings **must be closed** if they are about:

13. The consideration of a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or body is the head of an institution for the purposes of that Act [s. 239(3)(a)]
14. An ongoing investigation respecting the municipality by the Ontario Ombudsman, an appointed municipal ombudsman, or an appointed closed meeting investigator [s. 239(3)(b)]

GUIDE TO THE DISCRETIONARY EXCEPTIONS

Although every case is assessed on its own merits, here are some guidelines to the exceptions and examples of how the Ombudsman has interpreted them in investigations. For the latest case examples and full letters and reports, please see the digital **digest of open meeting cases** on our website, which can be searched by keyword, topic and municipality.

Note: Each exception is discussed in brief in this section; for the full text of the exceptions as they appear in the legislation, see pages 33-41, the section “Excerpts of relevant legislation.”

Security of municipal property – s. 239(2)(a)

Includes discussions about:

- Protection of municipally owned property from physical loss, theft or damage
- Loss, theft or damage can be corporeal (like vandalism) or incorporeal (like fraud)

Does not include discussions about:

- The financial interests of the municipality
- Strategy with respect to municipal infrastructure or growth
- Strategy with regard to municipal property, including its purchase or sale

Case examples:

- **Bruce County (May 2022):** A meeting about a project related to a nuclear innovation institute, including potential locations for the institute, did not fit within the exception for security of municipal property as no security implications were discussed.
- **Municipality of St.-Charles (February 2016, October 2019):** Discussions about a municipality’s finances that did not relate to the protection or security of those assets did not fit within the exception.
- **Town of Amherstburg (June 2018):** Discussion about seeking bids for policing services did not fit within the exception, as it did not deal with potential threats, loss, or damage to municipal property.
- **Town of Grimsby (November 2016):** Discussion about obtaining a valuation of a municipally controlled corporation did not fit within the exception since there was no apparent threat of loss or damage.

- **City of Port Colborne (November 2015):** Discussion about the potential sale of municipally owned shares did not fit within the exception. Even if a public discussion could have affected the value of shares, it was not about the security of municipal property.
- **Village of Burk's Falls and Armour Township (October 2015):** A closed meeting to discuss a potential amalgamation did not fit within the exception, despite a potential depreciation of municipal assets, because it did not relate to any specific property owned by the municipalities and the protection of that property.
- **City of Welland (November 2014):** Discussions of a marketing plan did not fit within the exception despite the city wanting to protect its competitive position relative to other municipalities; the discussion was not about protecting the marketing plan from loss or damage.

Personal matters about an identifiable individual – s. 239(2)(b)

Includes discussions about:

- Scrutiny of an individual's performance or conduct, including municipal staff
- Candidates for a job or committee, including education and employment history
- Allegations of an individual's possible violation of law

Does not include discussions about:

- An individual in their professional or official capacity
- Council members' remuneration or expenses and related policy
- General working relations between council and staff
- Salary bands, a hiring process, or staff reorganization
- Information already in the public realm

Case examples:

- **Municipality of Temagami (February 2021):** A statement about the fact of a harassment investigation did not fit within the exception for personal matters because neither the individual nor the nature of the complaint were discussed. A meeting cannot be closed just because the subject is sensitive.
- **City of Hamilton (October 2019):** Conducting interviews and discussing the suitability of individual candidates for the City Manager position was permitted in closed session.
- **Municipality of St.-Charles (October 2019):** Discussions about individual personal matters should have been parsed from broader discussions about finances.
- **Town of Plympton-Wyoming (February 2021):** Discussion about how to fill a council vacancy did not belong in closed session although a portion involving the qualifications of particular individuals did fit within the exception.
- **Municipality of Northern Bruce Peninsula (May 2018):** A discussion revealing a property identification number and the property's location, dimensions and boundaries did not constitute personal information and did not fit within the exception.
- **Township of Tehkummah (April 2018):** Discussion of employment status and job performance of an individual staff member constituted personal information.
- **Township of North Huron (January 2018):** Discussion about the conduct of municipal employees fit within the exception because the conduct fell outside the scope of their professional roles and was therefore personal information.
- **Township of Lanark Highlands (January 2018):** Scrutiny of a council member's conduct and

behaviour went beyond professional information and fit within the exception.

- **Town of Georgina (November 2017):** Discussion of an organizational review as part of a service delivery review would not have fit within the exception except that council discussed the performance of specific employees (i.e., personal matters) in relation to restructuring options.
- **Town of Petrolia (May 2018):** Discussion about unproven allegations against a member of council fit within the exception.

Acquisition or disposition of land – s. 239(2)(c)

Includes discussions about:

- Proposed or pending purchase or sale of municipal land, when the bargaining position of the municipality could be impacted by a public discussion of the matter
- Leased property, easements, or subdivision agreements relating to the municipality's property interests

Does not include discussions about:

- Speculation regarding prospective acquisition or disposition of land, where no bargaining position yet exists
- Real estate market volatility and its impact on land values in general
- Discussions when the other party to a transaction is present

Case examples:

- **Bruce County (May 2022):** Speculative and preliminary discussions about acquiring land did not fit within the exception as the county had no bargaining position to protect at that time. The exception also did not apply when the county discussed using a property it already owned for a project.

- **Norfolk County (March 2021):** Discussion about setting a target price per acre for specific parcels of land fit within the exception even though the land was not yet for sale.
- **Town of Carleton Place (November 2018):** Discussion about extended municipal water and sewer services to municipal properties fit within the exception because they were inextricably linked to the town's future bargaining position.
- **City of Timmins (April 2017):** Discussion about a proposed land transaction did not fit within the exception because the other party to the transaction was present at the meeting.
- **City of Port Colborne (November 2015):** Discussion about a non-profit organization buying a house from a private individual did not fit within the exception because the municipality was not a party to the transaction and therefore had no bargaining position to protect.

Labour relations or employee negotiations – s. 239(2)(d)

Includes discussions about:

- Unionized and non-unionized employees
- Compensation, benefits or vacation for specific employees
- Staff performance, conduct, discipline, hiring and firing
- Changes to workload or roles of specific employees
- Grievances under a collective agreement

Does not include discussions about:

- Council members, including their remuneration
- Organizational reviews or restructuring

Case examples:

- **City of Niagara Falls (March 2022):** Discussion about establishing a CAO recruitment sub-com-

mittee and procuring a third-party recruitment firm was not about the city's relationship with an employee and did not fit within the exception.

- **City of St. Catharines (February 2019):** Discussion about the role and nature of a proposed staff position, including the position's general responsibilities, salary and contract length, did not fit within the exception as it did not relate to any specific individuals or the city's employment relationship with them.
- **Town of Petrolia (May 2018):** Discussion about terminating employees of a community centre fit within the exception, despite no staff members being named individually, because all community centre employees would have been affected.
- **Town of Pelham (April 2018):** Discussion about the conduct and performance of a town employee fit within the exception.
- **Township of North Huron (January 2018):** When dozens of firefighters attended a closed meeting to talk to council about their working conditions, the discussion fit within the exception as it occurred during an ongoing labour dispute.
- **Town of Georgina (November 2017):** Discussion about the performance of particular employees in the context of organizational restructuring fit within the exception.

Litigation or potential litigation – s. 239(2)(e)

Includes discussions about:

- Ongoing litigation involving the municipality, including proceedings before administrative tribunals
- Litigation that is a real prospect, against or by the municipality
- Deciding whether or not to litigate in a specific case

Does not include discussions about:

- Speculation that litigation may arise in future, or where there is no evidence of any current or future legal proceedings
- Litigation that has concluded

Case examples:

- **Township of Russell (February 2021):** Discussion about specific verbal threats of litigation related to a zoning dispute was permitted in closed session.
- **Township of Brudenell, Lyndoch and Raglan (October 2021):** Council was permitted to ask staff in closed session for an update on ongoing litigation; council need not receive legal advice or discuss litigation strategy for the exception to apply.
- **Town of Carleton Place (October 2017):** Discussion about a contentious public statement by the mayor did not fit within the exception as there was no evidence of any reasonable prospect of litigation.
- **Municipality of St.-Charles (June 2017):** Discussion of written legal advice pertaining to ongoing legal proceedings fit within the exception.
- **City of Timmins (May 2017):** Discussion of council's concerns about an unsuccessful bidder in a procurement process did not fit within the exception as it was mere speculation that litigation might occur.
- **Norfolk County (November 2016):** Discussion about the development of a site-specific zoning by-law fit within the exception because an identifiable individual planned to file an appeal of the by-law to the tribunal.

Advice subject to solicitor-client privilege – s. 239(2)(f)

Includes discussions about:

- Communication between the municipality and its

solicitor, to seek or receive legal advice intended to be confidential (to ensure municipal officials can speak freely with their lawyer without fear of disclosure)

- Legal advice where the lawyer is not present, such as where advice is provided in writing or through staff

Does not include discussions about:

- A topic where the privilege has been waived, such as where a third party is present
- A topic other than the legal advice itself
- Whether or not to seek legal advice

Case examples:

- **Town of Collingwood (January 2022):** Discussions about quotes for legal fees containing specific information, such as suggested strategy, constituted advice subject to solicitor-client privilege and fit within the exception.
- **Municipality of Northern Bruce Peninsula (May 2018):** Brief mention of previously received legal advice did not make the entire discussion permissible in closed session.
- **Town of Pelham (April 2018):** Discussion of a report by an external consultant on the town's financial information fit within the exception because the consultant acted as an interpreter to allow the lawyers to provide legal advice.
- **Township of Lanark Highlands (January 2018):** Discussion of written advice from the township's solicitor fit within the exception, but at several points went beyond the legal advice; those portions of the meeting did not fit within the exception.
- **Town of Petrolia (May 2018):** Discussion about a third-party proposal did not fit within the exception; council had received legal advice on the subject in the past, but it was not discussed during the meeting.

- **Township of The North Shore (July 2020):** Having a third party attend a meeting will generally mean that solicitor-client privilege has been waived, but in this case, an external governance consultant attended to assist the solicitor in providing advice, so privilege was not waived.

Matters that can be discussed in closed session under another Act – s. 239(2)(g)

Includes discussions:

- That are explicitly permitted to be discussed in a closed meeting by an Act other than the *Municipal Act, 2001*

Does not include discussions:

- Where another Act might imply that a matter is sensitive, but does not explicitly state that the matter can be discussed in a closed meeting

Case examples:

- **Town of Amherstburg (June 2018):** While staff suggested this exception applied because a request for proposals (RFP) could have been discussed in private under the *Police Services Act*, there was no evidence that council considered the application of this exception, or that the RFP had been discussed in closed session by the town's police services board.
- **Municipality of Brockton (February 2017):** A closed information session attended by a quorum of council under the *Drainage Act* did not fit within the exception as that Act does not provide for holding a closed meeting.
- **Town of Grimsby (May 2017):** A meeting council attended of shareholders for a municipally controlled hydro company did not fit within the exception because the *Business Corporations Act* does not permit a closed meeting.

- **City of Hamilton (April 2015):** Discussion by council fit the exception because it was a matter that a police services board is allowed to discuss in closed session under the *Police Services Act*.

Information supplied in confidence by another level of government – s. 239(2)(h)

Includes discussion about information:

- Provided to the municipality by another level of government (Canada, a province or territory, or a Crown agency) and
- Explicitly supplied to the municipality or local board in confidence, i.e., marked confidential by the other level of government

Does not include discussions:

- Where the municipality determines the matter should be confidential, rather than the other level of government
- Where the information was provided by another municipality

Case examples:

- **Bruce County (May 2022):** Information supplied by another municipality does not fall within this exception as the exception applies only to information provided by Canada, a province or territory, or a Crown agency.
- **Township of Russell (December 2021):** Discussion was allowed in closed session because another level of government asked the township explicitly, in writing, to keep the information discussed confidential.
- **City of Niagara Falls (April 2020):** Information about a development and funding proposal was permitted in closed session because it was explicitly supplied in confidence by the federal government.

Information supplied in confidence by a third party – s. 239(2)(i)

Includes discussions about information that:

- Falls into one of the listed types: trade secret, scientific, technical, commercial, financial or labour relations information
- Was supplied confidentially, whether explicitly or implicitly, to the municipality by a third party and
- If disclosed, could reasonably be expected to cause harm, either by prejudicing significantly the competitive position or interfering significantly with the contractual or other negotiations of a person, group of persons or organization

Does not include discussions:

- Where the information did not belong to a third party
- Where there is only a merely possible or speculative risk of harm if the information were to be disclosed

Case examples:

- **Town of Pelham (June 2022):** There was no evidence that disclosure of information related to the future management and development of a local airport would cause significant harm.
- **Bruce County (May 2022):** Information about a proposed nuclear innovation institute did not fit in this exception because it was neither a trade secret nor scientific, technical, commercial, financial or labour relations information.
- **City of Greater Sudbury (May 2021):** Discussion about confidential commercial and financial information belonging to a third party was permitted in closed session, as it could have prejudiced the parties' competitive position and negotiations if disclosed.

- **Municipality of St.-Charles (October 2019):** A report commissioned by the municipality about its own finances did not fit within the exception as the exception is not intended to apply to information belonging to the municipality.

Information belonging to the municipality – s. 239(2)(j)

Includes discussions about information that:

- Falls into one of the listed types: trade secret, scientific, technical, commercial or financial information
- Belongs to the municipality or local board and
- Has monetary value or potential monetary value

Does not include discussions where:

- The municipality or local board has no proprietary or ownership interest in the information
- There is no evidence that the municipality or local board could sell the information for money

Case examples:

- **Township of Leeds and the Thousand Islands (April 2022):** Discussion about a study related to implementing high-speed internet was permitted because the information had monetary value and could have been sold.
- **City of Hamilton (June 2019):** While the city might have suffered economic loss if information about its Grey Cup bid were made public, there was no evidence that this information could have been sold by the municipality.

Plans and instructions for negotiations – s. 239(2)(k)

Includes discussions:

- About a position, plan, procedure, criteria or instruction

- Where the information is intended to be applied to negotiations carried on by the municipality or local board and
- The negotiations are ongoing or will be carried out in the future

Does not include discussions:

- In the absence of related negotiations
- Where negotiations are concluded

Case examples:

- **Town of Pelham (June 2022):** There was no evidence that any negotiations were pending or ongoing when council discussed the future of a local airport.
- **City of Pickering (September 2020):** Staff were permitted to update council in closed session on the status of ongoing negotiations with the province and other municipalities related to a local development project.
- **Town of Saugeen Shores (August 2020):** Council was permitted to provide staff in closed session with directions for how to proceed in ongoing lease negotiations for municipal property.
- **City of St. Catharines (February 2019):** Discussion about creating a government relations advisor position at the city did not fit within the exception. While the advisor might eventually have affected the city's negotiations with government, this discussion was not about formulating a detailed course of action with respect to any specific current or future negotiations.

Education or training – s. 239(3.1)

Includes discussions:

- Held solely for the purpose of educating and/or training council members; presenters and trainers should be advised in advance of the permissible

scope of the meeting and their materials vetted to ensure they do not materially advance decision-making

Does not include discussions:

- That materially advance council business or decision-making
- About subjects that are not for the purpose of educating or training

Case examples:

- **Township of Pelee (January 2022):** A gathering that does not materially advance council business or decision-making is not a meeting, but the Ombudsman commended council for going beyond the formal requirements of the Act and maximizing information available to the public by providing notice and recording minutes.
- **Municipality of West Nipissing (October 2019):** A discussion about the relationship between council and staff did not involve any education or training, focusing instead on divisions within council, council member conduct and interpersonal disputes.
- **City of Oshawa (July 2016):** A meeting with representatives of a local utilities company to discuss a potential merger did not fit within the exception because the information presented and the questions asked materially advanced council's business and decision-making.
- **Township of Russell (January 2016):** A closed session to train council on the principles of strategic planning fit within the exception as there was no decision-making or discussion of specific municipal priorities or plans.
- **City of Oshawa (March 2009):** A municipality cannot circumvent the open meeting law by characterizing a subject normally considered in open session as "educational."

Excerpts of relevant legislation

(Current to January 2023)

MUNICIPAL ACT, 2001

The open meeting provisions apply to municipal councils, local boards, and committees of either.

Interpretation

s. 1(1) “local board” means a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority; (“conseil local”)

Municipalities and local boards are required to have a procedure by-law relating to meetings. These by-laws must make provision for public notice of meetings.

Procedure by-law

Definitions

238 (1) In this section and in sections 239 to 239.2,

“committee” means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards; (“comité”)

“local board” does not include police services boards or public library boards; (“conseil local”)

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee. (“réunion”)

Procedure by-laws respecting meetings

(2) Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings.

Notice

(2.1) The procedure by-law shall provide for public notice of meetings.

Outside municipality

(3) The procedure by-law may provide that meetings be held and public offices be kept at a place outside the municipality within an adjacent municipality.

Electronic participation

(3.1) The applicable procedure by-law may provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting to the extent and in the manner set out in the by-law.

Same

(3.3) The applicable procedure by-law may provide that,

- (a) a member of a council, of a local board or of a committee of either of them who is participating electronically in a meeting may be counted in determining whether or not a quorum of members is present at any point in time; and
- (b) a member of a council, of a local board or of a committee of either of them can participate electronically in a meeting that is open to the public.

Special meeting, amend procedure by-law re electronic participation

(3.4) A municipality or local board may hold a special meeting to amend an applicable procedure by-law for the purposes of subsection (3.3).

Same, quorum

(3.5) A member participating electronically in a special meeting described in subsection (3.4) may be counted in determining whether or not a quorum of members is present at any time during the meeting.

...

The open meeting provisions set up the general obligations and exceptions.

Meetings open to public

239 (1) Except as provided in this section, all meetings shall be open to the public.

Exceptions

(2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

- (a) the security of the property of the municipality or local board;
- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

- (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act;
- (h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- (i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

Other criteria

- (3) A meeting or part of a meeting shall be closed to the public if the subject matter being considered is,
- (a) a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or
 - (b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under the *Ombudsman Act*, an Ombudsman referred to in subsection 223.13 (1) of this Act, or the investigator referred to in subsection 239.2(1).

Educational or training sessions

(3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Resolution

(4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

- (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or
- (b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection.

Voting

(5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote.

Exception

(6) Despite section 244, a meeting may be closed to the public during a vote if,

- (a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and
- (b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or com-

mittee of either of them or persons retained by or under a contract with the municipality or local board.

Minutes

(7) A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not.

Same

(8) The record required by subsection (7) shall be made by,

- (a) the clerk, in the case of a meeting of council; or
- (b) the appropriate officer, in the case of a meeting of a local board or committee.

The following sections relate to closed meeting complaint investigations.

Investigation

239.1 A person may request that an investigation of whether a municipality or local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public be undertaken,

- (a) by an investigator referred to in subsection 239.2 (1); or
- (b) by the Ombudsman appointed under the *Ombudsman Act*, if the municipality has not appointed an investigator referred to in subsection 239.2 (1).

Investigator

239.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an investi-

gator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, whether the municipality or a local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation.

...

Report and recommendations

(10) If, after making an investigation, the investigator is of the opinion that the meeting or part of the meeting that was the subject-matter of the investigation appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the investigator shall report his or her opinion and the reasons for it to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit.

Publication of reports

(11) The municipality or local board shall ensure that reports received under subsection (10) by the municipality or local board, as the case may be, are made available to the public.

Requirement to pass resolution re report

(12) If a municipality or a local board receives a report from a person referred to in clause 239.1 (a) or (b) reporting his or her opinion, and the reasons for it, that a meeting or part of a meeting that was the subject-matter of an investigation by that person appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the municipality or the local board, as the case may be, shall pass a resolution stating how it intends to address the report.

OMBUDSMAN ACT

Specific powers of investigation re municipalities, local boards

14.1 (3) If a person makes a request under clause 239.1 (b) of the *Municipal Act, 2001* or clause 190.1 (1) (b) of the *City of Toronto Act, 2006*, the Ombudsman may, as the case may be, investigate,

- (a) whether a municipality or local board of a municipality has complied with section 239 of the *Municipal Act, 2001* or a procedure by-law under subsection 238 (2) of that Act in respect of a meeting or part of a meeting that was closed to the public; or
- (b) whether the City of Toronto or a local board of the City has complied with section 190 of the *City of Toronto Act, 2006* or a procedure by-law under subsection 189 (2) of that Act in respect of a meeting or part of a meeting that was closed to the public.

...

Report and recommendations

(7) If, after completing an investigation under subsection (3), the Ombudsman is of opinion that the meeting or part of the meeting that was the subject-matter of the investigation appears to have been closed to the public contrary to section 239 of the *Municipal Act, 2001* or to a procedure by-law under subsection 238 (2) of that Act or contrary to section 190 of the *City of Toronto Act, 2006* or to a procedure by-law under subsection 189 (2) of that Act, as the case may be, the Ombudsman shall report his or her opinion, and the reasons for it, to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit.

Reports to be public

(8) The municipality or local board shall ensure that reports received under subsection (7) by the municipality or local board, as the case may be, are made available to the public.

Ombudsman may publish report

(9) The Ombudsman may, after making a report under subsection (7), publish the report or otherwise make it available to the public.

Making a complaint

Anyone can complain about a closed municipal meeting. Here's how:

Find out who the investigator is for the municipality by:

- Calling the municipality
- Checking the “**Municipal Closed Meetings: Investigators and Cases**” page on the Ombudsman’s website, or
- Calling our Office at 1-800-263-1830

If the municipality has appointed its own investigator, the Ombudsman does not have jurisdiction to handle the complaint. Our Office will refer such complaints to the municipality or the relevant investigator.

If the Ombudsman is the investigator for the municipality, our Office can take the complaint via:

- Our complaint intake telephone line: 1-800-263-1830, Monday to Friday, 9 a.m. to 4:30 p.m. or TTY: 1-866-411-4211
- The confidential complaint form on our website: www.ombudsman.on.ca
- E-mail: info@ombudsman.on.ca
- Fax: (416) 586-3485
- Mail:
Office of the Ontario Ombudsman
483 Bay Street
10th Floor, South Tower
Toronto, Ontario M5G 2C9

General questions about our process or the open meeting rules are also welcome via our website, email or 1-800 line.

“The democratic legitimacy of municipal decisions does not spring solely from periodic elections, but also from a decision-making process that is transparent, accessible to the public, and mandated by law.”

*Hon. Madam Justice Louise Charron,
Supreme Court of Canada*

Administration

Office of the Regional Clerk

1815 Sir Isaac Brock Way, PO Box 1042, Thorold, ON L2V 4T7

Telephone: 905-980-6000 Toll-free: 1-800-263-7215 Fax: 905-687-4977

www.niagararegion.ca

March 28, 2023

CL 5-2023, March 23, 2023

PWC 3-2023, March 7, 2023

WMPSC-C 5-2023, February 27, 2023

LOCAL AREA MUNICIPALITIES

SENT ELECTRONICALLY

Illegal Dumping 2022 Year End Summary and Updates

WMPSC-C 5-2023

Regional Council, at its meeting held on March 23, 2023, passed the following recommendation of its Public Works Committee:

That Report WMPSC-C 5-2023, dated February 27, 2023, respecting Illegal Dumping 2022 Year End Summary and Updates, **BE RECEIVED** and the following recommendations **BE APPROVED**:

1. That the Illegal Dumping Working Group Terms of Reference **BE REVISED** and **REPLACED** with the amended Illegal Dumping Working Group Terms of Reference provided in Appendix 1 of Report WMPSC-C 5-2023; and
2. That a copy of this report **BE CIRCULATED** to the Local Area Municipalities for information.

A copy of WMPSC-C 5-2023 is enclosed for your reference.

Yours truly,



Ann-Marie Norio

Regional Clerk

js

CLK-C 2023-033

cc : K. Ashbridge, Supervisor, Waste Management Services
B. Zvaniga, Commissioner, Public Works
N. Coffey, Executive Assistant to the Commissioner, Public Works

Subject: Illegal Dumping 2022 Year End Summary and Updates

Report to: Waste Management Planning Steering Committee

Report date: Monday, February 27, 2023

Recommendations

1. That the Illegal Dumping Working Group Terms of Reference **BE REVISED** and **REPLACED** with the amended Illegal Dumping Working Group Terms of Reference provided in Appendix 1 of Report WMPSC-C 5-2023; and
2. That a copy of this report **BE CIRCULATED** to the Local Area Municipalities for information.

Key Facts

- The purpose of the report is to provide an update regarding the issue of illegal dumping, information on updates to the Illegal Dumping Rewards Procedure and seek approval for the repeal and replacement of Illegal Dumping Working Group (IDWG) Terms of Reference.
- The IDWG Terms of Reference was last updated in 2016. The proposed updates are required to improve the effectiveness of the IDWG.
- The Illegal Dumping Rewards Procedure was implemented in 2014 to provide a financial reward to residents who report incidents of illegal dumping that lead to a conviction or a confirmed act of compliance. The proposed updated procedure will better align the rewards with the current illegal dumping set fines and fairly compensate those who assist with illegal dumping investigations.
- A total of 675 illegal dumping events were recorded in 2022. A high-level summary of these events is provided as part of this report, with further details in Appendix 3.

Financial Considerations

There are no significant financial implications anticipated with the proposed update to the IDWG Terms of Reference or Rewards Procedure.

Analysis

Staff are recommending updates to the IDWG Terms of Reference and Rewards Procedure as outlined in the sections below. Also included in this report is a summary of various illegal dumping related activities and statistics for information.

Updates to Illegal Dumping Working Group Terms of Reference

The IDWG is a Niagara Region-lead committee, which was formed in 2012 to ensure a consistent and collaborative approach to dealing with the issue of illegal dumping. The committee members include representatives from each local area municipality and any additional representatives from local partners who share an interest in mitigating illegal dumping across the region, including Ontario Power Generation (OPG), Crimestoppers and Great Lakes St. Lawrence Seaway.

Key priorities include:

- Ensure a consistent enforcement approach across the region
- Coordinate clean-up efforts between Niagara Region and local area municipalities (LAMs)
- Educate the public on the issue of illegal dumping, through awareness campaigns

Member participation in the IDWG has reduced over the past two (2) years, primarily due to member engagement in pandemic-related activities. To increase the effectiveness of the IDWG going forward, staff are requesting the approval of the updated IDWG Terms of Reference that are included in Appendix 1. The IDWG Terms of Reference were last updated in 2016.

Key changes to the Terms of Reference include clarification of Regional jurisdiction to investigate and enforce events of illegal dumping on public property and municipal responsibility to address dumping on private property and assist with clean up on municipal lands/roads.

Changes are being recommended to the IDWG composition and memberships; such as term of membership, chair, co-chair and sponsor requirements and minimum membership requirements are now clearly defined in the updated Terms of Reference. Meeting participation is expected to improve with the new addition of a quorum requirement. The minimum quorum has been set at 50% of municipal members plus one. IDWG meetings will not be scheduled without minimum quorum requirements being met. After three consecutive meetings missed an alternative member will be requested from the municipalities or organizations. The purposes of these changes to membership is to ensure the IDWG is receiving proper attendance and meetings are of value to the attending members and the IDWG can continue to advance it's mandate.

Member responsibilities is a new section added to the Terms of Reference.

Responsibilities include:

- Attend meetings or arrange for the alternate to attend
- Participate and support activities of the working group
- Bring forth new ideas to address illegal dumping
- Review meeting minutes and advise of concerns before finalizing minutes

In February 2022, the revised Terms of Reference were shared with the Public Works Officials and no comments were received regarding the proposed changes. The revised Terms of Reference were shared with the IDWG and reviewed in detail during the December 2022 hybrid meeting. During the meeting, changes related to the recommended member composition were discussed and were subsequently incorporated into the Terms of Reference as a result of the feedback from IDWG members.

Updates to Rewards Procedure

Rewards are currently available to residents whose report of illegal dumping results in a conviction or a confirmed act of compliance. The current rewards for a successful conviction is \$200 and \$50 for an act of compliance. Since the rewards procedure was implemented, the illegal dumping section of the By-law has evolved to include three (3) sections related to illegal dumping.

- 37.1 General Prohibition, set fine \$500.
- 37.2 Prohibition re: Public Space Litter/Recycling Bin, set fine \$150
- 37.3 Prohibition re: Care and Control, set fine \$250

Resident involvement in an illegal dumping investigation can vary from reporting the presence of dumped material to acting as an eyewitness, which would include completing a will-say statement and potentially appearing in court if the charge is taken to trial. The awards procedure is being updated to ensure residents that have the most involvement in a report are compensated at the higher level and residents who report the presence of dumped material are fairly compensated. The updated rewards process, will provide a \$200 reward for individuals reporting an illegal dump, which they witnessed that leads to a conviction under section 37.1 and a \$50 reward for the reporting of dumping that leads to a conviction under By-law section 37.2 (dumping in a litter bin), 37.3 dumping care and control, or compliance. The update rewards procedure

was presented to the Public Works Officials group and to the IDWG, no concerns were raised by either group.

In 2022, three (3) rewards for illegal dumping were provided to residents. Additional rewards resulting from charges laid in 2022 are likely to occur in 2023 as the associated charges are processed by the court system.

Summary of 2022 Illegal Dumping Activities and Statistics

2022 Illegal Dumping Statistics

Since the establishment of the IDWG in 2012, staff has tracked the number of reports of illegal dumping across the region.

Residents may report incidents of illegal dumping through the following tools:

- Niagara Waste App
- Niagara Online reporting tool
- Niagara Waste Info Line
- Crime Stoppers of Niagara

In 2022, 675 illegal dumps were reported, a 10% percent decrease in illegal dumping reports compared to 2021 when 748 dumps were reported. In 2020, 678 illegal dumps were reported. Although 2022 experienced a decrease in the number of reported illegal dumps compared to 2021, the number of reports is influenced annually by staffing resources for proactive monitoring work and promotional campaigns. A further breakdown of the illegal dumps by area municipality can be found in Appendix 3.

Illegal Dumping In Public Space Litter Bins

In 2022, Waste Management staff continued to proactively monitor public space litter bins and respond to reports of illegal dumping in, and around bins. In 2022, 24% of illegal dumps were found to be in or around a public space litter bins. This was similar to 2021 when 19% of all illegal dumps were found in, and around, public space litter bins. In response to this issue, staff recommended an update to the Waste Management By-law to strengthen the section pertaining to the prohibition of dumping of household and privately generated waste in and around public space litter bins. When public space litter bins are used for dumping, access for collection of litter bins for litter disposal can be reduced, which often leads to overflowing bins. Additionally, the presence of

unacceptable material – i.e. black bags of household garbage can attract additional dumping. Residents may see dumped material and believe this behaviour is acceptable. In the spring of 2022, staff installed warning stickers on public litter bins, primarily in St. Catharines, where the majority of litter bin dumping occurs. See Appendix 4 for signage image. The stickers warned potential dumpers that the bins are not for household waste and dumping would result in a \$175 fine (\$150 set fine, plus fees). Following the approval of set fines of the Waste Management By-Law 2022-32, in August 2022, staff began issuing Part I offence notices (ticket) to those who fail to adhere to the By-law and illegal dump in public litter bins. Over a four (4) month period, August to December 2022, staff charged 12 residents under section 37.2 of the By-law.

Litter Bin Blitz

In previous years staff have conducted an annual Litter Bin Inspection Blitz to audit public space litter bins for the presence of illegal dumping. Following the Blitz, warning letter were mailed to residents whose household garbage was found during the inspection. In 2021, approximately 10% of audited bins were found to contain illegal dumping. In March 2022 staff randomly audited 333 litter bins and found 9% of bins contained illegal dumping. In October and November 2022 staff inspected 384 litter bins located in hot spots for illegal dumping and found dumping in 16% of inspected bins. As a result of the fall litter bin inspections two (2) individuals were ticketed. Anti-illegal dumping signage was intended to reduce illegal dumping; however, the fall inspection of bins showed that signage was not reducing the incidents of illegal dumping at specific bins. In 2023 staff will continue to use this tool to inform residents that placing privately generated material, or household waste into a litter bin is a fineable offence. Additionally, the presence of signage on the litter bins could prove beneficial if a defendant, to an illegal dumping charge, opted to dispute the charge via an early resolution meeting or a trial.

2022 By-law Updates and Impacts on Part I Offence Notices (Tickets)

In the summer of 2022 By-law No. 2017-56 was repealed and replaced with By-Law No. 2022-32: A By-Law To Regulate The Use Of The Waste Management System For The Regional Municipality Of Niagara. With this By-law update, staff expanded Section 37.2: Illegal Dumping, Prohibition re: Public Space Litter/Recycling Bin to include a Care and Control provision. With the update to section 37.2, staff can now identify material deemed to have been in the Care and Control of a person (i.e. mail) which is contained within illegally dumped material, and issue a ticket based on the presence of this evidence. Prior to the inclusion of this provision, staff could not charge based

exclusively on evidence found within illegal dumping at litter bins and warning letters were used to advise residents of the By-law infraction. Prior to this By-law update, staff required an eyewitness to attest to the offence. The presences of an eyewitness occurs in very limited number of illegal dumping incidents.

As part of the 2022 By-law updates, staff were required to resubmit short form wording and set fines for approval to the Chief Justice of the Ontario Court. Staff did not request changes to set fines that had been approved in By-law 2017-56, including the fine associated with illegal dumping in the amount of \$750. However, in August 2022 the Chief Justice reduced the fine amount for Illegal Dumping to \$500. Various other set fines also were reduced by the Chief Justice during the approval process. Set fines are requested by Niagara Region but ultimately determined by the Chief Justice. The amount of the approved set fine is related to a number of factors including – similar set fines established in provincial legislation, the frequency of charges laid, and the likelihood and probability of payment. In light of the reduced set fine amount, the enforcement staff will use Part III Summons for incidents where higher set fines are required. These incidents may include, large-scale illegal dumping, repeat offenders, or dumping that has an elevated level of risk to human or environmental health. The use of the Part III Summons will allow staff to pursue fines that are greater than the set fine amount of \$500.

2022 Enforcement Activity

Waste management staff will investigate any incident of illegal dumping on public property. If evidence is found, staff will attempt to issue a Part I offence notice for the contravention of the By-Law. By-law enforcement officers may also request compliance, which requires a generator to remove dumped material. If the officer is unable to make contact with the generator i.e. the individual has moved, staff are unable to issue charges and the dumper information is kept on file. In cases where evidence is limited or insufficient, staff will issue a warning letter. In 2022, 104 dumps (15% of dumped material) was found to contain evidence, which resulted in 27 Part I offence notices. This represented an increase from 2021 and 2020 when 12 and seven (7) Part I offence notices were issued, respectively.

Promotion and Education

In spring 2022, the Illegal Dumping Communication campaign was used to address the issue of illegal dumping in the Niagara region. Campaign objectives included:

- Discourage acts illegal dumping in Niagara region
- Encourage residents to report illegal dumping when observed
- Raise awareness on the correct disposal options for commonly dumped materials

Additional details regarding the 2022 Illegal Dumping Communications campaign are included in WMPSC C-6-2023.

Next Steps

Illegal dumping is a concern for Niagara Region and LAMs. The act of illegal dumping creates eyesores, has environmental implications, and costs communities. In 2023, staff will continue to investigate reports of illegal dumping in order to identify generators and issue fines where appropriate. Staff, primarily interns, will proactively monitor public space litterbins and conduct the annual Litter Blitz. Staff will also continue to utilize an app based Geographical Information System (GIS) tool, which allows for real time data collection and accurate hot spots tracking. In 2023, staff are investigating expanding the use of the tracking tool to allow municipal partners to collect illegal dumping data in the field using the same tool as Regional staff.

Illegal Dumping Communications are planned for 2023. Communications will reinforce alternative disposal options for frequently dumped materials and encourage reporting through the various reporting tools.

Alternatives Reviewed

The option to maintain the existing Terms of Reference for the IDWG is not recommended as the changes to Terms of Reference are important to support the core function of the IDWG and improve the group's effectiveness. The IDWG may continue to function with the current Terms of Reference; however, the updated Terms of Reference will allow the members to ensure the IDWG's meetings are valuable and productive, by ensuring all municipal partners are involved.

The Rewards Procedure could remain in its original form; however, as the By-law has been updated to include varying charges for illegal dumping, there is the potential to issue rewards that are greater in value than the set fine amount. Additionally, the current rewards structure does not fairly compensate those who act as a witness and provide additional support to the investigation.

Relationship to Council Strategic Priorities

The recommended changes to the IDWG Terms of Reference and the Illegal Dumping rewards procedure meet Council's Strategic priority of Responsible Growth and Infrastructure Planning by protecting Niagara's environmental features through the reduction of illegal dumping. This report is being brought to Committee to enhance the tools currently used for the mitigation of illegal dumping in the region.

Other Pertinent Reports

- PW: 61-204 Approval of Illegal Dumping Working Group Initiatives
- PW 48-2013: Update on Illegal Dumping Initiatives

Prepared by:

Kate Ashbridge
Supervisor
Waste Management Services

Recommended by:

Bruce Zvaniga, P.Eng.
Commissioner of Public Works
Public Works Department

Submitted by:

Ron Tripp, P.Eng.
Chief Administrative Officer

Appendices

Appendix 1 - Illegal Dumping Working Group Terms of Reference

Appendix 2 - Region Wide Reward System Procedure

Appendix 3 - Illegal Dumping Investigations by Municipality Total Summary

Appendix 4 – Anti Illegal Dumping Litter Receptacle Sticker

Illegal Dumping Working Group Terms of Reference

1.0 Purpose of the Working Group

- 1.1. Ensure Local Area Municipalities and Niagara Region utilize a consistent and collaborative approach when dealing with illegal dumping.
 - 1.1.1. Coordinate clean-up efforts between Niagara Region and Local Area Municipalities collaboratively.
 - 1.1.2. Niagara Region jurisdiction to investigate and enforce events of illegal dumping on public property or roadside or in public space litter bins within Niagara Region.
 - 1.1.3. Municipal jurisdiction to address events of illegal dumping on private property and assist the Region with cleaning up events of illegal dumping on municipal roads and municipal properties.
 - 1.1.4. Ensure consistent enforcement approach through the use of the Niagara Region Waste Management By-Law, as well as other Local Area Municipal anti-dumping By-Laws.
- 1.2. Educate the public on illegal dumping through awareness campaigns.
- 1.3. Maintain reporting tool and tracking dashboard to analyze illegal dumping statistics and activity.
- 1.4. Map and monitor Hot Spots.
- 1.5. Develop and apply techniques to discourage illegal dumping.
- 1.6. Create future initiatives to mitigate illegal dumping.

2.0 Working Group Composition and Memberships

- 2.1 The Working Group seeks representation from Niagara Region, all Local Area Municipalities, Crime Stoppers and any additional representative(s) from local partnerships who share an interest in mitigating illegal dumping across the region.
- 2.2 Working Group Chair and Co-Chair term is a minimum of one (1) year.
- 2.3 There shall be one Chair, one Co-Chair on the Working Group. The Co-Chair may step in to serve as the Chair at the meetings of the Working Group.
- 2.4 There shall be one Sponsor on the Working Group at the Director level from Niagara Region. Working Group Sponsor to provide overall guidance and oversight to the Working Group, and liaise with Public Works Officials on behalf of the Working Group as required.

- 2.5 There shall be a minimum membership of one (1) individual representing each of the twelve (12) Local Area Municipalities and one (1) individual representing Crime Stoppers. The recommended municipal membership is two (2) members to represent both public works and by-law department for Local Area Municipality, where possible.
- 2.6 The quorum of the Working Group is 50 percent of Local Area Municipal membership, plus one. Therefore, at least seven (7) Local Area Municipal representatives are required for quorum. Working Group members shall respond to the meeting invitation with within two business days of the meeting date (i.e. respond by end of day Monday for a Wednesday meeting). If for whatever reason a quorum is not met, the meeting will be rescheduled to the earliest reasonable date.
- 2.7 Each participating member may register an alternate Working Group member for the purpose of attending meetings and for conducting business of the Working Group in the event that a regular member of the Working Group is unavailable. An alternate Working Group member may attend any meeting of the Working Group, however, will be considered to be a non-participating observer and will not be counted in establishing a quorum unless the regular Working Group member is absent.
- 2.8 If a Working Group member or their alternate misses three consecutive meetings, the Working Group may choose to seek a replacement for that member within the same organization.
- 2.9 Members must agree to work within the Working Group's Terms of Reference.

3.0 Meetings

- 3.1 Meeting Frequency
 - 3.1.1 The members shall meet a minimum semi-annually.
- 3.2 Minutes
 - 3.2.1 Minutes of the Working Group shall be recorded by the Co-Chair.
 - 3.2.2 Minutes will be submitted to the Niagara Region Director of Waste Management within two (2) weeks of the meeting, for approval.
 - 3.2.3 Minutes will then be circulated to Working Group Members via email and SharePoint.

4.0 Responsibilities

4.1 Working Group Members

- 4.1.1 Attend all Working Group meetings. If members are unable to attend a meeting, and they have a designated alternate, the member shall arrange with their designated alternate to attend in their absence.
- 4.1.2 Participate in and support the execution of activities and projects of the Working Group.
- 4.1.3 Have an interest in reducing illegal dumping and spreading awareness to properly dispose or divert waste throughout available waste management programs.
- 4.1.4 Review meeting minutes and advise of concerns before finalizing minutes as a group at the following meeting.

4.2 Co-Chairs

- 4.2.1 Record Meeting Minutes
- 4.2.2 Act as Chair when Chair is unable to attend.
- 4.2.3 Distribute meeting agenda at least two (2) weeks in advance of meeting.

4.3 Chair

- 4.3.1 Schedule semi-annual meetings and prepare materials to present and discuss.
- 4.3.2 Take a leadership role in guiding the discussions.
- 4.3.3 Review and provisionally approve minutes from previous meeting.
- 4.3.4 Distribute approved meeting minutes and presentation materials via SharePoint.

4.4 Working Group Sponsor

- 4.4.1 Review and officially approve minutes from previous meeting.
- 4.4.2 Provide guidance and support to Working Group as required.

5.0 Reporting

- 5.1 Niagara Region and Local Area Municipal members will provide the Working Group with semi-annual illegal dumping statistics due before June 30th and December 31st of each year.
- 5.2 Members of this Working Group shall provide updates to the Working Group Members during semi-annual meetings.
- 5.3 The Chair shall report to Niagara Region's Council by means of an annual

summary report to the Waste Management Planning Steering Committee which then is approved by the Public Works Committee. The annual summary report will also be presented to Public Works Officials.

6.0 Budget

- 6.1 The Working Group shall discuss budgets (Region and Municipal) to be allocated to illegal dumping concerns (rewards, clean ups, remedial action etc.)

7.0 Communications

- 7.1 Niagara Region communications staff to share illegal dumping promotion and education with Local Area Municipalities to create awareness and help prevent acts of illegal dumping.
- 7.2 An illegal dumping communication summary of the previous year will be provided to Working Group Members at the first semiannual meeting.
- 7.3 New artwork will be approved by a representative at Crime Stoppers of Niagara for use in the illegal dumping campaign.
- 7.4 Municipalities can purchase Illegal dumping signage from Niagara Region to be installed in Hot Spot areas on municipal property.
- 7.5 Niagara Region to install illegal dumping signage in approved Hot Spot areas on Regional roads.
- 7.6 If evidence is discovered, but the evidence is not sufficient to issue a certificate of offence, Niagara Region staff shall issue a warning letter to the suspect and the Region shall retain evidence for one year.

8.0 Definitions

Hot Spots: Process used to visualize geographical data in order to show areas with a high density or cluster of events.

Illegal Dumping Reward System Procedure

1. Reward Amount

- a. \$200 reward for a person reporting eyewitness information about illegal dumping in Niagara region that leads to a By-law conviction under section 37.1 of the Region's Waste By-law as amended. Residents must be willing to complete a will-say statement and understand that they may be required to act as a witness in the event that a trial date is set.

Or

\$50 reward for a person reporting information about illegal dumping that leads to a By-law conviction under section 37.2 or 37.3 of the Region's Waste By-law as amended, or compliance is achieved.

- b. Conviction is when either:
 - i. The fine paid by the offender.
 - ii. The offender challenges the Notice and is found guilty in court.
- c. Compliance occurs when the generator removes the dumped material.

2. Eligibility

- a. Illegal dumping reports can be received by the Niagara Region or Local Area Municipality.
- b. The person reporting an illegal dump must provide sufficient information about the illegal dump and may be required to provide evidence to the court as an eye witness.
- c. Illegal dumping reward applies to occurrences on public land or public rights of way in accordance with the related By-laws.
- d. Niagara Region or Local Area Municipality can initiate and issue the Offence Notice.
- e. Reward is only available for an illegal dumping location within a participating Local Area Municipality or on Regional roads/property.
- f. Rewards are only to be paid with successful conviction or compliance. The process may take several months.
- g. In the case of multiple reports for the same illegal dumping incident, only one reward would be available. The person who reports the incident first will be eligible for the reward.

3. Process for Reward

- a. An illegal dumping report is received by Niagara Region through online tools, e-mail or a phone call. The report may also be received by the Local Area Municipality.
- b. Investigation leads to issue of Offence Notice or cleanup of dumped material by the generator.
- c. Offence Notice is issued or generator cleanup is confirmed by staff. Occurrence is recorded in Illegal Dumping tracking database by appropriate staff at the Region or Local Area Municipality. Once generator cleanup is confirmed proceed to step (g).
- d. The By-law Officer issuing the Offence Notice will follow up with POA Office as to the outcome of the Notice to confirm if it was paid, charges dropped or proceeding to court.
- e. The By-law Officer or designate from the authority issuing the Offence Notice will record the outcome in the Illegal Dumping tracking database.
- f. The Area Municipality will inform the Region of any successful convictions issued at their level.
- g. Upon confirmation of successful conviction/compliance, Niagara Region will contact the reward recipients to inform them their illegal dumping report lead to a successful conviction/compliance.
- h. Only reward recipients will be contacted.
- i. The Region By-Law Officer will complete the Region's cheque requisition form to request the reward be paid to the reward winner. A joint letter from the Region and participating Local Area Municipality will accompany the reward payment, co-signed by the Regional Chair, and the Mayor of the Municipality
- j. Niagara Region will charge back the Local Area Municipality for their share of the reward at 50%.

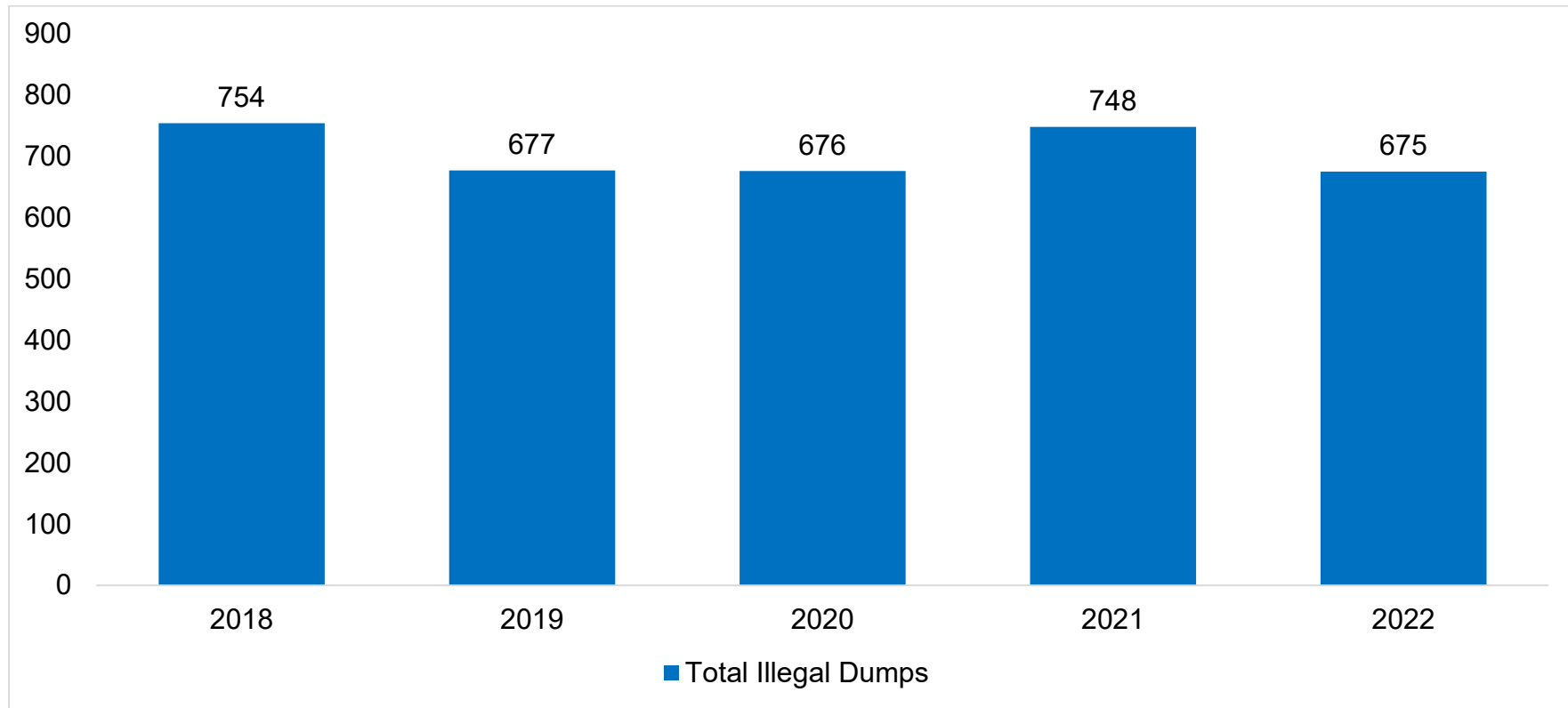
Appendix 3 – Illegal Dumping Statistics

Figure 1: 2022 Illegal Dumping Reports by month and municipality

2022 Illegal Dumping Reports													
Municipality	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Fort Erie	3	1	1	6	1	4	1	5	5	1	2	4	34
Grimsby	2	1	1	1	0	0	1	1	2	1	1	1	12
Lincoln	0	1	2	2	0	1	3	0	2	2	3	2	18
Niagara-on-the-lake	2	0	1	3	9	2	3	4	8	1	4	5	42
Niagara Falls	8	6	11	17	16	20	14	11	10	10	19	14	156
Pelham	2	2	1	4	0	2	1	2	3	3	2	2	24
Port Colborne	1	1	1	2	1	3	1	0	1	3	2	2	18
St. Catharines *	4	6	37	16	14	10	13	13	10	13	77	11	224
Thorold	2	5	1	5	5	5	5	5	6	4	4	11	58
Wainfleet	0	1	0	0	0	0	1	0	2	1	0	1	6
Welland	3	1	3	3	3	4	5	4	8	5	10	5	54
West Lincoln	4	1	5	1	1	4	7	1	2	1	2	0	29
TOTAL	31	26	64	60	50	55	55	46	59	45	126	58	675

* St. Catharines illegal dumping records show a high percentage of illegal dumping compared to other Local Area Municipalities primarily due to the number of illegal dumps that occur in and around public litter bins.

Figure 2: Graph depicting the number of illegal dumps per year for the last five (5) years in all municipalities.



Over the past five (5) years the number of reported illegal dumps has ranged from a high of 754 illegal dumps in 2018 to a low of 675 in 2022. The average over the five (5) years was 706 dumps per year. The total number of dumps has been relatively stable, with only a 12% change from min and max values. The 2022 data shows an 11% decrease in dumping over the previous year. While illegal dumping data is highly valuable for staff to identify trends, hot spots and focus proactive monitoring, it is impacted by staffing resources. When proactive monitoring occurs, specifically for litter bins there is increased the number of illegal dumping events in the recorded data. The effects of monitoring can be seen in the November 2022 column of Table 1, the total dumps recorded in November was 180% higher than October. This change in recorded dumping is a result of the fall litter bin blitz, where Intern staff were proactively inspecting bins for illegal dumping.

Appendix 4 Illegal Dumping Litter Bin Stickers



NO HOUSEHOLD GARBAGE

Illegal dumping is a crime. Minimum fine is \$175

SEE IT. **REPORT IT.** STOP IT.

Administration

Office of the Regional Clerk

1815 Sir Isaac Brock Way, PO Box 1042, Thorold, ON L2V 4T7

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March 28, 2023

CL 5-2023, March 23, 2023

PEDC 3-2023, March 8, 2023

PDS 6-2023, March 8, 2023

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2022 Niagara Region Employment Inventory Results

PDS 6-2023

Regional Council, at its meeting held on March 23, 2023, passed the following recommendation of its Planning and Economic Development Committee:

That Report PDS 6-2023, dated March 8, 2023, respecting 2022 Niagara Region Employment Inventory Results, **BE RECEIVED** and **BE CIRCULATED** to the Local Area Municipalities, Local Economic Development Offices, Workforce Collective, the Niagara Chambers of Commerce and Brock University.

A copy of PDS 6-2023 is enclosed for your reference.

Yours truly,



Ann-Marie Norio

Regional Clerk

js

CLK-C 2023-036

cc: M. Sergi, Commissioner, Planning & Development Services
N. Oakes, Executive Assistant to the Commissioner, Planning and
Development Services

Distribution List

Local Area Municipalities
Local Economic Development Offices
Workforce Collective
Niagara Chambers of Commerce
Brock University

Subject: 2022 Niagara Region Employment Inventory Results

Report to: Planning and Economic Development Committee

Report date: Wednesday, March 8, 2023

Recommendations

1. That this report **BE RECEIVED** for information; and
2. That PDS 6-2023 **BE CIRCULATED** to the Local Area Municipalities, Local Economic Development Offices, Workforce Collective, the Niagara Chambers of Commerce and Brock University.

Key Facts

- This report highlights the key performance indicators of the data collected during the 2022 Niagara Employment Inventory (NEI) period.
- The NEI is a direct data collection exercise (inventory and questionnaire) where a small team of post-secondary students inventory businesses and where possible contact publically accessible (signed) businesses in person within Niagara during the summer months. The inventory is completed annually.
- The Region began conducting the NEI in 2016. The NEI has not been conducted since 2019 due to public health restrictions imposed in an effort to contain the COVID-19 pandemic, as well as concerns regarding low response rate and poor sample quality if conducted remotely. The NEI was reinitiated in 2022.
- The 2022 NEI team inventoried a total of 13,033 businesses throughout Niagara and received 5,811 completed questionnaires, which captured location of 112,501 full and part-time jobs and the associated data about the jobs reported by businesses who chose to participate in the questionnaire.
- Data captured through the NEI is shared with and is a key asset for internal Regional departments, local area municipalities, Brock University and the Workforce Collective. A subset of the data collected is also published to Open Data to make it available to the public.

Financial Considerations

The NEI was funded through the Council-approved 2022 operating budget and has been included in the approved 2022 Planning and Development Services base budget.

Analysis

Niagara Region is among several municipalities in Ontario that collect workplace and employment data. Since 2016, Planning and Development Services has worked closely with Economic Development to collect primary data on the types and sizes of businesses operating in Niagara.

The NEI has not been conducted since 2019 due to public health restrictions imposed by all levels of government to help contain the COVID-19 pandemic. Given that the primary data collection method for the NEI is through in-person interviews, the project was halted as risks related to the health and safety, and the probability of a low response rate and poor sample quality were high.

Prior to the two year reporting gap, the NEI was and will continue to be conducted annually by a small team of post-secondary students between the months of May and September. The primary data collection method is through door-to-door, in-person interviews with local business owners, with additional follow-up engagement conducted through email and telephone communication.

The data collected has become vital to monitoring the region's economic health, as well as aiding in decision and policy making. The information collected over the years has cumulated into a comprehensive dataset of business information that provides the ability to analyze the regional employment landscape over time. The inventory is a geo-coded, spatially enabled dataset that facilitates analysis at a street-address level.

The business questionnaire (included as Appendix 1) was developed based on best practices from other municipalities in the Greater Toronto and Hamilton Area, as well as through consultation with the following stakeholders and experience gained over the years from administering the project:

- Internal Regional departments;
- Local area municipalities;
- Local economic development offices,
- Brock University; and
- Workforce Collective (formerly the Niagara Workforce Planning Board).

Each year, the NEI questionnaire features a core set of questions that are tailored to gain fundamental insight into the local business community. These questions remain unchanged from year to year to enable the ability to compare results over time. The core questions are in alignment with employment questionnaires administered by our municipal counterparts in the Greater Toronto and Hamilton Area.

This year, two new categories were added to the questionnaire focused on (1) diversity, equity and inclusion and (2) work from home. These questions were added to gain an understanding of the demographic characteristics of the business community, and to provide insight into the number of businesses with employees working from home.

Participation in the NEI is voluntary. Despite best efforts, the project team is unable to make direct contact with all business owners or, occasionally, a business declines to participate. Due to these factors, the reported results may not fully align with other surveys conducted by Statistics Canada or other interest groups as only the jobs captured during the inventory period are reported on.

In 2022, the NEI team inventoried 13,033 businesses and received 5,811 completed questionnaires, which captured the physical location of 112,501 full and part time jobs.

Compared to 2019 results, this is an increase of over 1,000 inventoried businesses, with a decrease of over 35,400 jobs identified. It is important to note that the number of jobs reported is not a reflection of the local job market, but rather is the result of a lower participation rate compared to 2019, and that the total number of businesses inventoried includes businesses observed to no longer be in operation or vacant.

Niagara Region considers the results of the 2022 NEI to be successful in light of the two year reporting gap and challenges associated with the COVID-19 pandemic. Staff turnover and changing business operations became an obstacle when trying to engage businesses, largely because the contact information in the NEI database became outdated, and the project team had to refresh and/or reintroduce the inventory to the Niagara business community.

Results

Table 1 illustrates the proportion of complete and partially complete inventory records from 2016-2019, and in 2022. A complete inventory record indicates that a business provided responses to the inventory questionnaire from beginning to end ("complete questionnaire"), or the business was confirmed to be permanently closed or vacant.

Partially complete records indicate the inventory team was not able to make direct contact with a business representative. In these cases the project team still captures several key attributes, such as verifying the physical location of the data point and associated sector and industry codes. The NEI continues to see a low rate (less than 1%) of businesses, who when contacted, decline to participate.

Table 1 – Inventory Completion Rate

Year	Complete Inventory Record	Partially Complete Record	Declined to Participate
2016	68%	30%	2%
2017	76%	22%	2%
2018	87%	12%	1%
2019	90%	9%	<1%
2022	75%	24%	<1%

A steady increase in the completion rate was observed from 2016-2019. The gradual increase prior to the COVID-19 pandemic can be attributed to greater familiarity with the project team, a streamlined data entry methodology, and joint communication outreach conducted by our local Chambers of Commerce and other interest groups. In 2022, a completion rate of 75% was achieved. The completion rate in 2022 is very strong considering the challenges associated with the two year break and having to refresh or reintroduce the inventory to businesses.

Job Type Results

Appendix 2 illustrates the number of businesses inventoried and jobs captured within complete questionnaires in the 2022 NEI by sector based on the 2-digit North American Industry Classification System (NAICS). The NAICS was established by statistical agencies of Canada, Mexico and the United States. It is a standardized industry classification system used to categorize business establishments based on the type of economic activity of the business.

Based on the number of businesses inventoried, the top three sectors observed in 2022 were: Retail Trade (22.9%), Accommodation and Food Services (15.0%) and Other Services (13.7%)¹. When combined, these sectors make up of over half of all the businesses captured in the inventory.

Based on the number of jobs captured in complete questionnaires, the top three sectors observed in 2022 were: Retail Trade (18.0%), Accommodation and Food Services (15.8%), and Educational Services (13.3%). Together, these sectors make up 47.1% of the total jobs captured in complete questionnaires.

¹ Other Services includes repair shops, personal care facilities and laundry services, among other industries.

Business Closures and Openings

Since 2019, approximately 1,343 businesses inventoried have been identified as no longer being in operation or vacant. The top three sectors that experienced business closures were Retail Trade; Accommodation and Food Services; and Health Care and Social Assistance.

Over the same period, approximately 994 new businesses were identified in the inventory. The top three sectors that new businesses were observed in are: Retail Trade; Accommodation and Food Services; and Other Services (Except Public Administration).

Distribution of Inventoried Businesses and Number of Jobs by Municipality

Appendix 2 contains a table that illustrates the municipal breakdown of the number of businesses and jobs reported over the five year inventory period. As mentioned above, the total businesses inventoried includes businesses observed to no longer be in operation or vacant, and total jobs reported are only for complete questionnaires.

Work from Home

Public health restrictions prompted many sectors to modify how they operate to address rapidly changing circumstances. The 2022 NEI questionnaire was expanded to help establish an understanding of these workplace modifications, through questions focused on employees working from home, return to work plans and changing space needs.

In total, 566 businesses reported having staff working from home, representing approximately 7,463 employees. The majority of employees working from home were in the Educational Services (49.4%), Manufacturing (8.6%), and Professional, Scientific and Technical Services (7.3%). The majority of businesses that responded did not report a change in space needs, with 662 businesses needing more space and 150 businesses needing less space.

Diversity, Equity and Inclusion

Niagara Region is the first municipal employment questionnaire in the Golden Horseshoe to include questions pertaining to Diversity, Equity and Inclusion (DEI). These questions were added in 2022 to gain a baseline understanding of demographic characteristics of the leadership teams in the Niagara business community.

Table 2 provides a summary of the responses to the questions in the newly added DEI section. Businesses were asked whether the majority of the business (+50%) are owned or led by individuals that identify as:

- Person who identifies as a woman;
- First Nations, Inuit or Métis person;
- Person who identifies as a member of the 2SLGBTQQIA+² community;
- Person who identifies as being disabled;
- Youth (Less than 18 years old); or
- Person who identifies as a visible minority.

Respondents could also choose to decline to answer each question.

Table 2 – Diversity, Equity and Inclusion Responses

Response	Women Led	2SLGBTQQIA+ Led	Disability Led	First Nations, Inuit, Metis Led	Visible Minority Led	Youth Led
Yes	942	69	35	29	182	13
No	1,147	1,937	2,021	2,051	1,832	2,079
Decline	1,452	1,500	1,458	1,445	1,491	1,416

Respondents were given the option to complete the DEI section in person or online. Of the 5,811 business owners that submitted questionnaire responses, approximately 2,300 left these DEI questions blank and approximately 1,400 declined to answer.

Staff in the DEI and Indigenous Relations team are reviewing the responses to these questions to better understand the high level of incomplete answers and to develop strategies to increase response rates in the future. This data will also be used to inform ongoing DEI initiatives at the Region.

Utilizing NEI Data

The data collected each year through the NEI provides detailed local business information that is not available through Statistics Canada data. In most cases, Statistics Canada data is updated once every five years, whereas the NEI is updated on a yearly basis, excluding the two year data gap prompted by the COVID-19 pandemic.

² Two Spirit, Lesbian, Gay, Bisexual, Trans, Queer, Questioning, Intersex, Asexual, and all other sexual orientations and genders.

Statistics Canada data remains the authoritative data source for performing analysis at regional and municipal level geographies, but lacks the ability to analyze raw business data at the street address level. Collecting annual business data at the street address level allows for detailed analysis to be carried out at custom geographies and time series.

The NEI results are used in conjunction with Statistics Canada data and other data sources to accurately monitor the regional economy. This allows for a better understanding of where the Region can take action to help facilitate economic growth and understand the changes that have taken place during the two year reporting gap.

Reliable business data is an integral resource to better understand the region's employment context. This dataset plays a significant role in supporting decisions related to: population and employment growth, infrastructure investment (including public transit), economic development inquiries, and the ongoing monitoring of economic conditions and trends.

In addition to supporting decision making, the data collected over the years has been used by the Region to facilitate analysis to support and add value to various projects. Below are examples of projects that the NEI data has been used for:

- South Niagara Hospital Project Business Directory;
- Niagara Official Plan Land Needs Assessment;
- Niagara Region Waste Collection Contract Review; and
- Brock University Sports Market Research.

Economic Development also uses the NEI data to connect businesses to supply chain opportunities, support international promotion through the Niagara Canadian Business Directory, and to assist in analyzing the regional economy.

Rebuilding Relationships

The NEI also provides a key opportunity for the Region to personally connect with local businesses in order to further develop partnerships and foster an environment for innovation and development within the Niagara business community. Staff turnover and changing business operations became an obstacle when trying to engage businesses, largely because the contact information in the NEI database became outdated. Given the two year reporting gap, the project team focused on rebuilding relationships with the business community in 2022. To do so, the project team sought to educate business representatives on the value of the data relative to how it is used by the Region and local municipalities, and provided an opportunity to listen to any comments or concerns.

Addressing concerns of business owners continues to be an important step in building and maintaining strong working relationships with the community. On occasion, concerns were expressed by business owners, which were addressed immediately by the project team. Where the project team could not address the concern, the business owner was referred to resources available at the Region, such as the Waste Management Info-Line or local business support services.

Table 3 highlights the responses received when business owners were asked “Is there anything Niagara Region could do to help support your business?” For reporting purposes, the responses have been categorized into themes only. The raw comments are shared with applicable internal departments, and with local municipal partners.

Table 3 - “Is there anything Niagara Region could do to help support your business?”

Response Themes	Responses Received 2022	Proportion 2019	Proportion 2022
Infrastructure/Traffic Issues/Construction	290	11.0%	17.3%
Waste Management	265	3.6%	15.8%
Taxes and Utilities	209	18.2%	12.5%
Business Exposure	193	16.4%	11.5%
Social Support Programs/Programs	109	3.6%	6.5%
Incentives/Grants/Contracts	104	7.5%	6.2%
Skills and Labour Force	103	12.1%	6.2%
Health and Safety	92	5.4%	5.5%
Parking Issues	92	5.3%	5.5%
Impact of COVID-19	50	N/A ¹	3.0%
Development Process/Zoning/Land Use	46	3.4%	2.7%
Awareness and Education	39	1.7%	2.3%
Beautification	28	N/A ¹	1.7%
Transit	26	4.7%	1.6%
Governance	20	N/A ¹	1.2%
Development Charges	7	0.6%	0.4%
Total	1,673	100%	100%

¹ These themes were added in 2022 to reflect responses from the business community.

Open Data

Each year, a subset of the NEI results are released to the public through the Niagara Region Open Data Portal. Open Data places information in the hands of the public, promoting innovation and fostering greater transparency and accountability. The following attributes from the Employment Inventory dataset are made available to the public including, business name, location information, 6-digit North American Industry Classification System (NAICS) code, and employee size categories.

Alternatives Reviewed

Council may choose to purchase macro-level employment data from a secondary source, which is costly and aggregated to larger geographies. Secondary data sources are generally not published as frequently and do not provide the same level of detail when compared to primary data collected by the Region.

Purchasing secondary data is not recommended given that it will not address the data gap that the NEI was initially implemented to resolve and it will not provide the same level or quality of data. Continuing to collect primary data annually provides a baseline to analyze historical trends, forecast employment growth, supplement other employment sources and provide a resource back to the community. Conducting the NEI in house also allows for the questionnaire to be customized to address the changing needs of the Region and interested parties.

The goal of the NEI is to update the data on an annual basis to monitor, understand and track changes in the employment landscape over time. With successive years of data collection, historic analysis of the data will show how specific businesses, sectors and geographic areas in Niagara evolve over time as our economy changes. It also provides an opportunity for the Region to build relationships with the business community through direct, in-person engagement with staff.

Relationship to Council Strategic Priorities

The NEI is a key tool that the Niagara Region uses to strengthen its economic competitiveness by better understanding its current employment landscape and workforce composition.

The NEI project supports Council's strategic priorities of supporting business and economic growth, establishing a healthy and vibrant community, responsible growth and infrastructure planning and a sustainable and engaging environment. Data collected through engaging the business community is used to inform decision-making related to population and employment growth, infrastructure investment, public transit planning, economic development, and the ongoing monitoring of economic conditions.

The Niagara Region and Area Municipalities rely on this dataset as a valuable asset when developing robust business cases designed to attract investment, innovation, and entrepreneurship to Niagara and strengthen the Region's position globally.

Other Pertinent Reports

- PDS 13-2016 – Niagara Region Employment Survey
- PDS 1-2017 – Niagara Region Employment Inventory Preliminary Results
- PDS 5-2018 – Niagara Region 2017 Employment Inventory Results
- PDS 6-2019 – Niagara Region 2018 Employment Inventory Results
- PDS 5-2020 – Niagara Region 2019 Employment Inventory Results
- PDS 12-2021 – 2021 Niagara Employment Inventory Status Update

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This report was prepared in consultation with Julianna Vanderlinde, Employment Inventory Coordinator, and reviewed by Angela Stea, Director, Community and Long Range Planning.

Appendices

Appendix 1	2022 Niagara Employment Inventory Questionnaire
Appendix 2	Data Tables

APPENDIX 1

2022 Niagara Region Employment Inventory Questionnaire

Niagara Region is conducting an annual inventory of businesses to gather information for planning policy and economic development purposes. Information collected through this inventory will be grouped together and publicly reported to Regional Council in 2023. Information collected through this inventory will also be shared with Niagara’s local municipal governments, economic development offices and Employment Ontario agencies. A subset of the information collected will be released publically through Niagara Region's open data program, observing your rights and freedoms outlined in the Municipal Freedom of Information and Protection of Privacy Act. For more information about this initiative please visit [Niagara's Employment Inventory](https://www.niagararegion.ca/business/employment-inventory/default.aspx) (https://www.niagararegion.ca/business/employment-inventory/default.aspx).

Business Identification

Business Name:

Business Contact Name:

Street Address:

Unit/Suite #:

Municipality:

Postal Code:

Public Business Telephone #:

Business Contact Email:

Business Website:

Business Mailing Address:
(only if different from above)

Business Details

What year did this business open **in Niagara**?

Is this business involved in the tourism sector?
Yes ☐ No ☐

Does this business sell goods or services outside Canada?
Yes ☐ No☐

Does this business import goods from outside Canada?
Yes ☐ No ☐

Does this business have foreign or international ownership? Yes ☐ No ☐

If yes, what is the primary country of origin?

Provide details about the specific services and/or agricultural activities associated with the business. (e.g. Full-service restaurant, Insurance agency, Machine shop, Engineering services, Roofing contractor, Vineyard, Dairy cattle farm, etc).

Is this business a non-for-profit organization? Yes ☐ No ☐

Is this business home-based? Yes ☐ No ☐

Is this business involved with agriculture? Yes ☐ No ☐

Business Size

What is the **indoor** floor size (GFA) of this business?

☐ Feet ☐ Metres ☐ Estimate

What is the **outdoor** operating area of this business (if applicable)?

☐ Acres ☐ Hectares ☐ Estimate

How many people are presently employed (including owners) at THIS location?

	# of Full Time Employees (work more than 30 hours per week)	# of Part Time Employees (work less than 30 hours per week)
PERMANENT		
SEASONAL (between 4-6 months per year)		
CONTRACT		

Do employees work shift work? Yes ☐ No ☐

Do employees work weekends? (Work outside the hours of 7:00 am to 6:00 pm) Yes ☐ No ☐

Work from Home

Are there currently staff that work from home? If yes, what percentage?

Yes ☐ No ☐

Have space needs changed in the past year? How does this business plan to return to the workplace?

- ☐ Yes – need less space
- ☐ Yes – need more space
- ☐ No
- ☐ Fully return
- ☐ Return in a hybrid scenario
- ☐ Do not plan to return
- ☐ Unsure
- ☐ Not Applicable

Sports Businesses in Niagara

Is this business involved in sport-related markets or activities (i.e. customers, suppliers, other)?

Yes ☐ No ☐

Equity, Diversity and Inclusion

Is the majority of this business (+50%) owned or led by a woman or women?

Yes ☐ No ☐ Prefer not to answer ☐

Please return completed form to Niagara Region, Planning and Development Services at your earliest convenience.

E-mail: employmentinventory@niagararegion.ca Fax: 905-641-5208 Mail: Employment Inventory, 1815 Sir Isaac Brock Way, PO Box 1042, Thorold, ON L2V 4T7

Is the majority of this business (+50%) owned or led by:

First Nations, Inuit or Métis person
Yes ☐ No ☐ Prefer not to answer ☐

Person who identifies as a member of the 2SLGBTQIA+ community
Yes ☐ No ☐ Prefer not to answer ☐

Person who identifies as being disabled
Yes ☐ No ☐ Prefer not to answer ☐

Youth (Less than 18 years old)
Yes ☐ No ☐ Prefer not to answer ☐

Person who identifies as a visible minority
Yes ☐ No ☐ Prefer not to answer ☐

Please provide details below if you desire:

Regional Service Delivery

Does this business currently use the Region’s curbside recycling (i.e. Blue/Grey Boxes/Carts) program for the collection of recyclables? Yes ☐ No ☐ Unknown ☐

Additional Information

Is there anything the Niagara Region can do to help support this business?

Consent

Do you consent to receiving email communications from the Niagara Region or your Local Area Municipality on programs, services or news related to your business, and/or participating in future studies from the Niagara Workforce Planning Board for the purpose of workforce research? Personal information will be collected, used and disclosed in accordance with applicable legislation and you will have the opportunity to opt-out of communications at any time. Any questions related to the information collected please contact: Planning and Development Services at 905-685-4225 ext. 3442
Yes ☐ No ☐

APPENDIX 2

Data Tables

Table 1 – Distribution of Inventoried Businesses and Jobs by Municipality

Municipality	2016 Total Businesses	2016 Total Jobs	2017 Total Businesses	2017 Total Jobs	2018 Total Businesses	2018 Total Jobs	2019 Total Businesses	2019 Total Jobs	2022 Total Businesses	2022 Total Jobs
Fort Erie	709	6,351	719	6,867	763	8,414	775	8,301	844	5,547
Grimsby	443	4,009	455	4,750	465	5,204	479	6,682	512	4,210
Lincoln	440	4,198	543	6,650	564	6,964	571	8,108	604	6,772
Niagara Falls	2,514	22,929	2,553	32,982	2,642	32,687	2,715	33,473	2,982	24,415
NOTL	456	7,082	513	9,707	560	11,238	596	10,926	636	7,999
Pelham	271	1,743	301	2,275	318	2,677	334	3,202	372	2,865
Port Colborne	461	2,912	465	3,917	468	4,176	478	4,682	518	3,405
St.Catharines	3,657	43,045	3,771	44,254	3,966	48,130	4,051	48,726	4,396	40,107
Thorold	460	4,980	491	5,307	523	5,674	538	6,693	582	5,425
Wainfleet	43	179	58	402	60	507	61	479	72	497
Welland	1,161	11,221	1,158	12,122	1,188	14,149	1,214	14,010	1,299	9,274
West Lincoln	128	1,489	175	1,911	203	2,364	204	2,677	216	1,985
Niagara Region	10,743	110,138	11,202	131,144	11,720	142,184	12,016	147,959	13,033	112,501

Table 2 – Number of Businesses and Jobs by NAICS Sector

NAICS Industry Sector (2-Digit)	Number of Jobs 2022	Number of Jobs Proportion of Region	Number of Businesses 2022	Number of Businesses Proportion of Region
Retail trade	20,302	18.0%	2,984	22.9%
Accommodation and food services	17,802	15.8%	1,958	15.0%
Educational services	14,963	13.3%	253	1.9%
Manufacturing	11,793	10.5%	886	6.8%
Health Care and social assistance	9,803	8.7%	1,364	10.5%
Public administration	8,603	7.6%	219	1.7%
Other services (except public administration)	4,196	3.7%	1,780	13.7%
Construction	4,041	3.6%	411	3.2%
Arts, entertainment and recreation	3,534	3.1%	418	3.2%
Administrative and support, waste management and remediation services	3,161	2.8%	296	2.3%
Professional, scientific and technical services	2,928	2.6%	779	6.0%
Agriculture, forestry, fishing and hunting	2,462	2.2%	141	1.1%
Wholesale trade	2,372	2.1%	258	2.0%
Transportation and warehousing	2,092	1.9%	230	1.8%
Finance and Insurance	1,864	1.7%	486	3.7%
Real estate and rental and leasing	1,464	1.3%	328	2.5%
Information and Cultural Industries	520	0.5%	165	1.3%
Utilities	315	0.3%	33	0.3%
Undetermined	183	0.2%	26	0.2%
Mining, quarrying, and oil and gas extraction	59	0.1%	8	0.1%
Management of companies and enterprises	44	0.0%	10	0.1%
Total	112,501	100%	13,033	100%

Subject: JP Niagara Experience 2023 Date Night Event –
Designation of Municipal Significance

Recommendation:

BE IT RESOLVED THAT Council receive Report #2023-0080 – JP Niagara Experience 2023 Date Night Event – Designation of Municipal Significance, for information.

AND THAT Council designate the JP Niagara Experience 2023 Date Night Event, to be held from 7:00 pm to 10:00 pm on May 11, 2023, and May 18, 2023, at 1934 Centre Street, as a Municipally Significant Event.

Background:

On November 7, 2022, Council approved, in principle, the issuance of a Special Event Permit to J.P Niagara Tulip Experience to host a seasonal tulip pick event at 1934 Centre Street from April 26, 2023, to May 20, 2023. Subsequently, the Special Event Permit was issued by the Clerk on November 18, 2022.

In collaboration with Rockway Vineyard, the applicant is requesting to expand the original event to include a “date night” from 7:00 pm to 10:00pm on Thursday, May 11, 2023, and Thursday, May 18, 2023. The date night events would allow a maximum of 60 couples per night to purchase a picnic basket inclusive of one bottle of wine, one box of charcuterie, one bunch of tulips and plasticware. The event is proposed to take place at the tulip farm, 1934 Centre Street, by reservation only.

The Alcohol and Gaming Commission of Ontario (“AGCO”) is responsible for administering the *Liquor Licence and Control Act, 2019* and is the licensing and regulatory regime for the sale, service, and delivery of liquor in Ontario. The AGCO administers the Special Occasion Permit (“SOP”) program which provides individuals the ability to sell liquor outside of a liquor licensed establishment. There are varying types of SOPs, each with their own application requirements. To obtain a Public Event SOP, the AGCO requires a municipal resolution declaring the event as municipally significant.

This is a standard request for all Public Event SOP applications and is required for the facilitation of the J.P Niagara Tulip Experience date night event.

Analysis:

A Public Event SOP from the AGCO is required for events that are open to public. This type of SOP allows for advertisement and profit from the sale of alcohol. Furthermore, a resolution from the host municipality declaring the event as municipally significant is required to make application.

As part of the SOP process, the applicant is required to notify agencies such as the Niagara Regional Police Service and Niagara Region Public Health. As such, only internal Town departments were consulted prior to writing this report. Internal departments offered no objection to this designation. It is recognized the AGCO will review the final application and impose conditions to ensure the event operates safely and in compliance with regulations regarding the sale and consumption of alcohol. Additionally, events designated as municipally significant must comply with all other applicable legislation, including Town by-laws.

While the Town may designate an event as municipality significant, the Registrar for the AGCO ultimately has the final decision of whether to issue the SOP. In other words, even with this designation, the Registrar may deny the SOP request.

Please note, this the first request of this nature that Council has received from an independent third party. Commonly, requests for the designation of municipally significant events are brought forward by the Recreation, Culture and Wellness department for events such as Summerfest and the Thursday Night Experience. It is anticipated that requests of this nature will increase with the demand of outdoor seasonal events.

Financial Considerations:

This matter has no financial implications.

Alternatives Reviewed:

Council can deny the request to designate the event as municipally significant. As a result, the applicant would not be permitted to apply for a Public Event SOP through the AGCO.

Strategic Plan Relationship: Strong Organization

Seasonal events offer residents recreational activities as well as the opportunity to support local businesses in a safe environment.

Consultation:

Fire and By-law
Planning and Building
Recreation, Culture and Wellness

Other Pertinent Reports/Attachments:

Date Night Event Request Letter
Site Plan (Note: Picnic area is to be licensed for the date night event)
Notification letter to: Fire Services, Niagara Regional Public Health, Niagara
Regional Police

Prepared and Recommended by:

Sarah Leach, BA
Deputy Clerk

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer



To:

Town of Pelham
Pelham Town Square
Fonthill, ON L0S 1E0

From:

JP Niagara Tulip Experience
1934 Centre street, Ridgville, ON
Paula Boots
Email: jpnigaratulipexp@gmail.com
Tel: [REDACTED]

Event Notification;

We hereby would like to inform Town of Pelham that we are hosting a "date-night" at our pick your own tulip field on May 11 and May 18 from 7pm till 10pm

Our guests have to make reservations to attend this event, we will not accept walk -ups. There will be a limited amount of visitors of 60 couples- 120 people.

The event is an evening picnic in our fenced in picnic area or tulip field. The guests will receive a picnic basket upon arrival fully prepared at Rockway vineyard. The basket will contain 1 bottle of wine a charcuterie box, 2 plastic glasses, utensils, napkins, 1 bunch of 20 tulips.

The winery will deliver the picnic baskets to the farm after being prepared in their kitchen, we will hand out the baskets at the farm and give the bunch of tulips.

The picnic will be supplied by Rockway Vineyards, 3290 Ninth Street, St. Catharines, ON L2R 6P7

Attached is the event permit from the town of Pelham.

Regards,

Paula Boots

[REDACTED]
jpnigaratulipexp@gmail.com
[REDACTED]



To:
Town of Pelham Building Department,
20 Pelham Town Square
Fonthill.ON L0S 1EO

From:
JP Niagara Tulip Experience
1934 Centre street, Ridgeville, ON
Paula Boots
Email: jpniagaratulipexp@gmail.com
Tel [REDACTED]

Event Notification;

We hereby would like to inform Pelham building department that we are hosting a "date-night" at our pick your own tulip field on May 11 and May 18 from 7pm till 10pm

Our guests have to make reservations to attend this event, we will not accept walk -ups. There will be a limited amount off visitors of 60 couples- 120 people.

The event is an evening picnic in our fenced in picnic area or tulip field. The guests will receive a picnic basket upon arrival fully prepared at Rockway vineyard. The basket will contain 1 bottle of wine a charcuterie box, 2 plastic glasses, utensils, napkins, 1 bunch of 20 tulips.

The winery will deliver the picnic baskets to the farm after being prepared in their kitchen, we will hand out the baskets at the farm and give the bunch of tulips.

The picnic will be supplied by Rockway Vineyards, 3290 Ninth Street, St. Catharines, ON L2R 6P7

Attached is the event permit from the town of Pelham.

Regards,

Paula Boots
[REDACTED]
jpniagaratulipexp@gmail.com
[REDACTED]





To:
Pelham Fire Service
177 Highway 20 west
Fonthill ON, L0S 1E0

From:
JP Niagara Tulip Experience
1934 Centre street, Ridgeville, ON
Paula Boots
Email: jpniagaratulipexp@gmail.com
[REDACTED]

Event Notification;

We hereby would like to inform Town of Pelham Fire service that we are hosting a "date-night" at our pick your own tulip field on May 11 and May 18 from 7pm till 10pm

Our guests have to make reservations to attend this event, we will not accept walk -ups. There will be a limited amount of visitors of 60 couples- 120 people.

The event is an evening picnic in our fenced in picnic area or tulip field. The guests will receive a picnic basket upon arrival fully prepared at Rockway vineyard. The basket will contain 1 bottle of wine a charcuterie box, 2 plastic glasses, utensils, napkins, 1 bunch of 20 tulips.

The winery will deliver the picnic baskets to the farm after being prepared in their kitchen, we will hand out the baskets at the farm and give the bunch of tulips.

The picnic will be supplied by Rockway Vineyards, 3290 Ninth Street, St. Catharines, ON L2R 6P7

Attached is the event permit from the town of Pelham.

Regards,

Paula Boots
[REDACTED]
jpniagaratulipexp@gmail.com
[REDACTED]



To:

Niagara Region Public Health
1815 Sir Isaac Brockway
Thorold, On L2V 4Y6

From:

JP Niagara Tulip Experience
1934 Centre street, Ridgeville, ON
Paula Boots
Email: jpniagaratulipexp@gmail.com
[REDACTED]

Event Notification;

We hereby would like to inform Niagara Region Public Health that we are hosting a "date-night" at our pick your own tulip field on May 11 and May 18 from 7pm till 10pm

Our guests have to make reservations to attend this event, we will not accept walk -ups. There will be a limited amount off visitors of 60 couples- 120 people.

The event is an evening picnic in our fenced in picnic area or tulip field. The guests will receive a picnic basket upon arrival fully prepared at Rockway vineyard. The basket will contain 1 bottle of wine a charcuterie box, 2 plastic glasses, utensils, napkins, 1 bunch of 20 tulips.

The winery will deliver the picnic baskets to the farm after being prepared in their kitchen, we will hand out the baskets at the farm and give the bunch of tulips.

The picnic will be supplied by Rockway Vineyards, 3290 Ninth Street, St. Catharines, ON L2R 6P7

Attached is the event permit from the town of Pelham.

Regards,

Paula Boots

[REDACTED]
jpniagaratulipexp@gmail.com
[REDACTED]



To:

Niagara Regional Police service
5700 valley way
Niagara Falls Ontario L2F 1X8

From:

JP Niagara Tulip Experience
1934 Centre street, Ridgeville, ON
Paula Boots
Email: jpniagaratulipexp@gmail.com
[REDACTED]

Event Notification;

We hereby would like to inform Niagara Regional police service that we are hosting a "date-night" at our pick your own tulip field on May 11 and May 18 from 7pm till 10pm

Our guests have to make reservations to attend this event, we will not accept walk -ups. There will be a limited amount off visitors of 60 couples- 120 people.

The event is an evening picnic in our fenced in picnic area or tulip field. The guests will receive a picnic basket upon arrival fully prepared at Rockway vineyard. The basket will contain 1 bottle of wine a charcuterie box, 2 plastic glasses, utensils, napkins, 1 bunch of 20 tulips.

The winery will deliver the picnic baskets to the farm after being prepared in their kitchen, we will hand out the baskets at the farm and give the bunch of tulips.

The picnic will be supplied by Rockway Vineyards, 3290 Ninth Street, St. Catharines, ON L2R 6P7

Attached is the event permit from the town of Pelham.

Regards,

Paula Boots

[REDACTED]
jpniagaratulipexp@gmail.com
[REDACTED]

Subject: Recommendation Report – Revised Applications for Draft Plan of Subdivision and Zoning By-law Amendment - Kunda Park Phase 4

Recommendation:

BE IT RESOLVED THAT Council receive Report #2023-89 for information as it pertains to File Nos. 26T19-020-02 & AM-03-2020;

AND THAT Council directs Planning staff to prepare the by-law for approval of the Zoning By-law amendment for Council's consideration;

AND THAT Council approves the Draft Plan of Subdivision, attached as Appendix A, subject to the conditions in Appendix B.

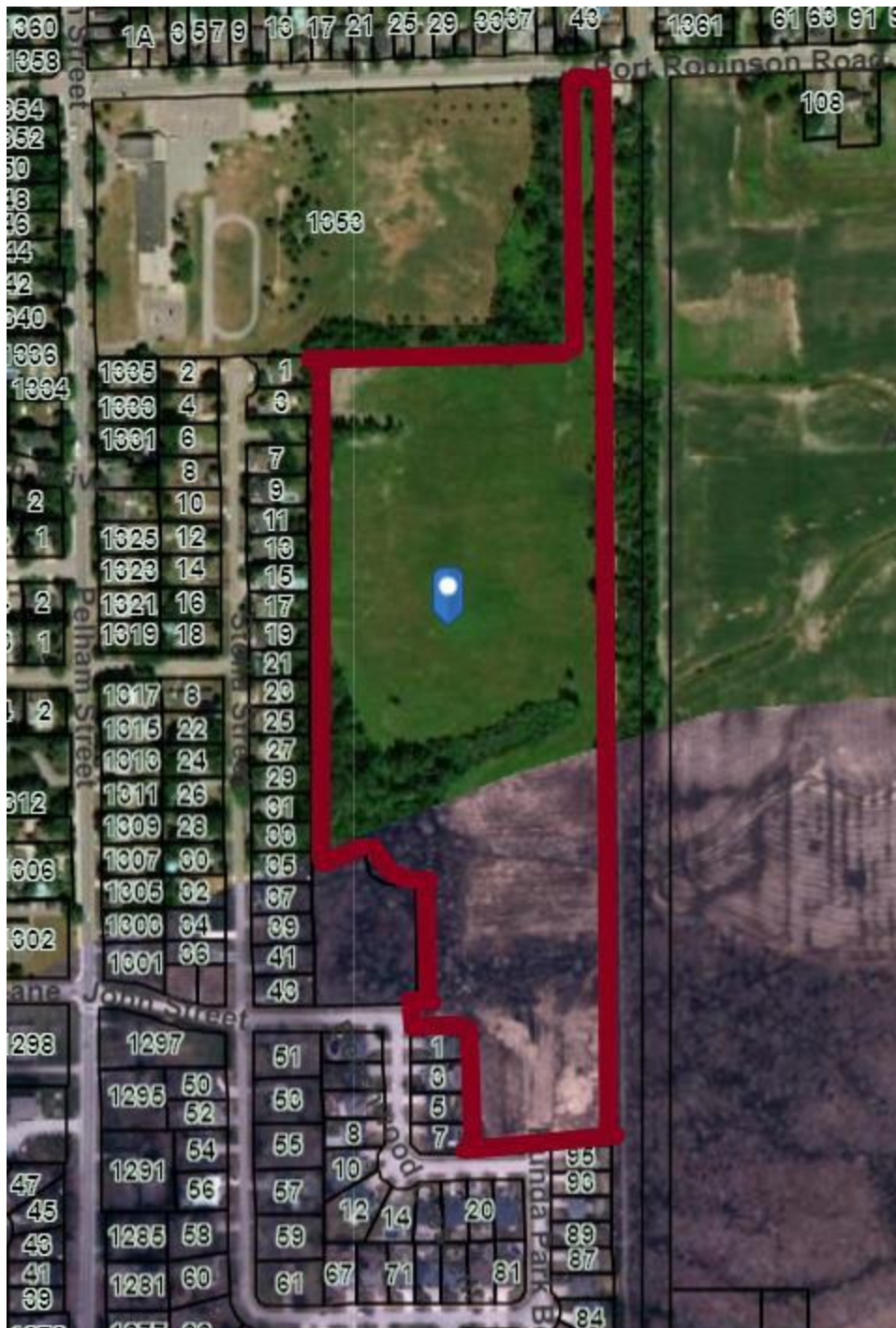
Executive Summary:

The purpose of this report is to provide Council with recommendations regarding applications for Draft Plan of Subdivision and Zoning By-law Amendment for the Kunda Park Phase 4 development.

Location:

The property is located east of Stella Street and west of the Steve Bauer Trail (Figure 1) known legally as Part of Thorold Township Lot 173, in the Town of Pelham, Regional Municipality of Niagara.

Figure 1: Property Location

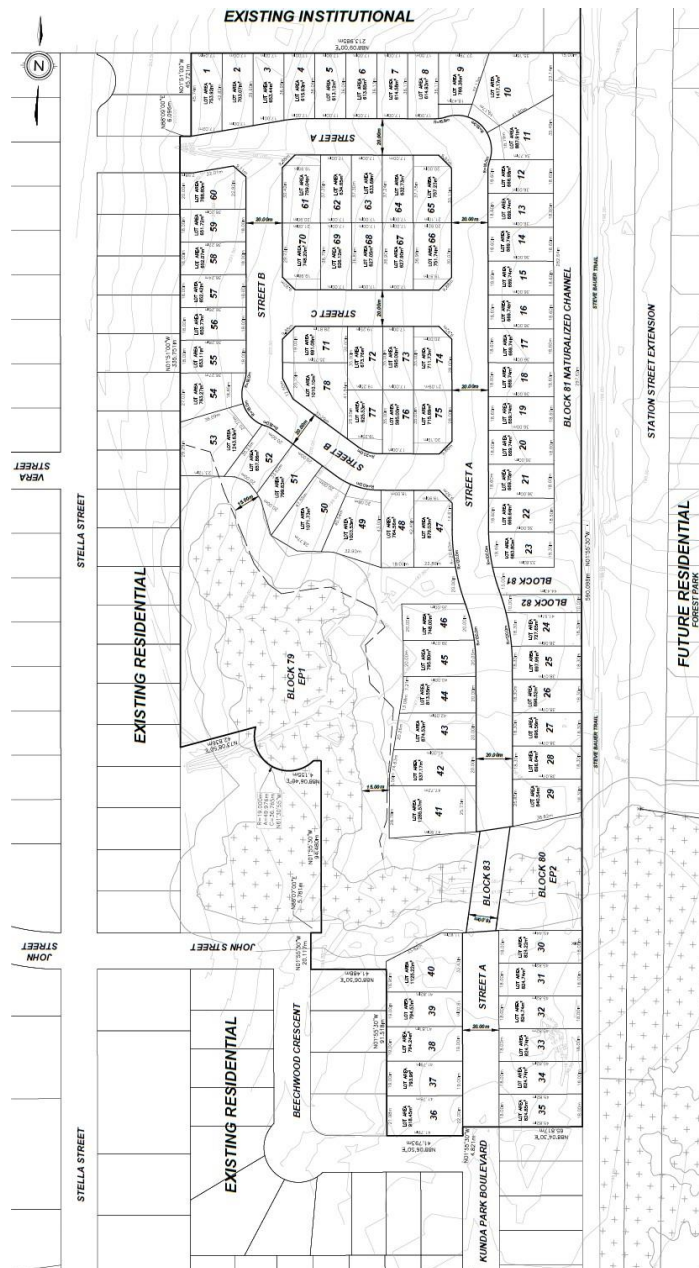


Project Description and Purpose:

The property is 11.104 hectares in size. The revised draft plan of subdivision proposes lots 1-78 for single detached dwellings, Blocks 79 and 80 for environmental protection

where the existing Provincially Significant Wetland and Woodland features are located, Block 83 for the road crossing of the Provincially Significant Wetland, Block 81 for a naturalized channel to convey stormwater east into the storm outlet crossing the Steve Bauer Trail to be conveyed to the proposed stormwater management facility located in the Forest Park Draft Plan of subdivision, Block 82 for pedestrian walkway connection to the Steve Bauer Trail and 2.002 hectares for roadways (Figure 2).

Figure 2: Revised Draft Plan of Subdivision



The revised zoning by-law amendment application proposes to rezone the lands from Residential One (R1) to a site-specific Residential Two (R2) and Environmental Protection (EP) zones. The zoning change would permit the use of single detached dwellings on the future building lots and recognize the location of the wetland, woodland and naturalized channel. The change to the zoning application reflects the new layout of the subdivision in terms of lot locations, road network and the addition of the naturalized channel.

As Council is aware this has been an active file with the Town for many years and the plan has gone through many revisions to address changing requirements with respect to natural heritage and most recently in response to Council resolution that would not allow any road connections over the Steve Bauer Trail. Changes to the plan over the years to present have been summarized in Table 1 for background information.

Table 1: History of Kunda Park Phase 4 Applications

2002 – 2003
<ul style="list-style-type: none"> • Original subdivision application circulated by Town to departments and agencies for comments.
<ul style="list-style-type: none"> • Town brings forward Technical Information Report.
<ul style="list-style-type: none"> • NPCA meets with environmental consultant and MNR staff to review fish habitat issues. Advised that fish habitat requires 15 m buffer on both sides of watercourse.
<ul style="list-style-type: none"> • Revised draft plan application submitted to resolve MNR / NPCA fish habitat issues and drainage issues. • Revised draft plan illustrates removal of Block 96 (lands east of Glynn A. Green Elementary School) among other changes.
<ul style="list-style-type: none"> • NPCA objects to revised proposal and requests EIS to justify the appropriateness of the reduced fish habitat buffer. • Niagara Region supports the NPCA's position and cites concerns with existing stormwater management facility.
2004 – 2006
<ul style="list-style-type: none"> • Ongoing discussions between environmental + engineering consultants and Town. • Town supports the proposed relocation of watercourse through parkland block subject to the provision of lands for drainage conveyance purposes at the rear of some proposed lots. • NPCA reiterates its requirements for a 15 m vegetated buffer and that any encroachment into the buffer will require an EIS.
2007 – 2008
<ul style="list-style-type: none"> • Draft plan modified to address drainage and fish habitat issues.
<ul style="list-style-type: none"> • MNR provides Savanta Inc. with key information for the scoped EIS (July 23, 2007) but does not identify any PSW on the subject lands.

<ul style="list-style-type: none"> • EIS prepared by Savanta Inc. • No wetlands identified by the MNR on Extension 3 or 4 lands.
<ul style="list-style-type: none"> • MNR designates the existing wetland features as being part of a PSW (Provincially Significant Wetland complex).
<ul style="list-style-type: none"> • NPCA responds to EIS requesting numerous revisions. • NPCA will not support draft plan of subdivision until the PSW issue has been resolved with MNR.
<ul style="list-style-type: none"> • Ongoing discussions between consultants, Town and MNR. • Quartek Group (agent) advises MNR of their intention to appeal the PSW limits.
<ul style="list-style-type: none"> • MNR re-evaluates the PSW and updates their mapping to now include a 1.6 ha wetland area. This decision had major repercussions on the Town's ability to develop this public park dedicated as part of Kunda Park Extension 3, effectively removing that possibility.
<ul style="list-style-type: none"> • Notice of revised draft plan is circulated to departments and agencies in September 2008. • NPCA reiterates former position respecting the PSW and informs Town that they would be unable to support the application unless the submission is modified. • Niagara Region provides comments (October 2008) recommending increased mix of housing types and lot sizes to provide more opportunities for affordable housing and higher density.
2009 – 2010
<ul style="list-style-type: none"> • LCA Environmental Consultants prepared a scoped EIS based on a revised draft plan with 20 fewer residential lots. • NPCA agrees with new EIS conclusions about an 18 m wide channel block and a 30 m buffer for the PSW.
<ul style="list-style-type: none"> • Another Pre-Consultation meeting was held with NPCA not supporting the servicing of subject lands via the PSW. • NPCA states the preferred alternative of rerouting services eastward along the Steve Bauer Trail / unopened road allowance to bypass the undisturbed PSW.
2011 – 2012
<ul style="list-style-type: none"> • Ed Kunda, owner of Fonthill Downs Ltd., passes away in 2011. Property is then purchased by Sterling Realty who begins dialogue with Town.
2013 – 2014
<ul style="list-style-type: none"> • Town confirms its intent to develop municipal park on previously dedicated land (from Phase 3). • MNR confirms no changes to PSW wetland mapping on Town owned block. Further dialogue between stakeholders ensues. • NPCA advises Town that a scoped EIS would be required to develop the parkland block in any capacity, including as a passive park. • Town's solicitor advises the NPCA and MNR of its legal authority to develop the park block in accordance with the statutory provisions in effect at the time (1990). • The status of the parkland block do not implicate the processing of Kunda Park Phase 4 under the <i>Planning Act</i> as it was dedicated under the 3rd phase of Kunda Park.

- Additional studies, reports and plans prepared by the developer's consultant team analyzing servicing and design solutions circulated for agency review.

2016 – 2021

- Another Pre-Consultation (January 2016) was held to discuss a modified draft plan, Zoning By-law Amendment, and status updates on the bat / five-lined Skink Study.
 - Sterling Realty undertook a Municipal Class (B) Environmental Assessment to study the feasibility of extending a public street over a PSW (southerly road connection to Kunda Park Boulevard). A PIC (Public Information Centre) was held on January 17, 2018 by Upper Canada Consultants on behalf of that process. The Class Environmental Assessment was approved by the Ministry of the Environment in 2018 permitting the public street over the PSW (Block 83 on the current plan).
- On February 1, 2019, Sterling Realty applied for a resubmission of the draft plan of subdivision, which proposed the inclusion of the aforementioned PSW street crossing. Town staff then circulated the resubmission to commenting agencies to solicit feedback.
 - Town Planning staff provided negative feedback on the revised draft plan citing major policy issues, namely a lack of housing variety and disconnected transportation network among other things.
 - Niagara Region and NPCA also provided negative feedback with respect to a lack of information in the EIS, particularly surrounding the watercourse.
- Another Pre-Consultation (November 2019) was held to discuss a modified draft plan, Zoning By-law Amendment and updates to supporting prescribed information (PJR, EIS, Functional Servicing Report etc.).
- On May 1, 2020, Sterling Realty applied for a resubmission of the (still original 2002) draft plan of subdivision and applied for a new (2020) Zoning By-law Amendment (file: AM-02-2020) to rezone the lands to address Town staff and agency concerns. Town staff then circulated the resubmission and rezoning application to solicit agency and department feedback.
- A public meeting was held on October 13, 2020 to receive input on the applications. The meeting was held jointly with a public meeting for Forest Park draft plan of subdivision and zoning by-law amendment on lands east of the Steve Bauer Trail also owned by the Sterling Realty due to proposed shared street and servicing connections and the higher density proposed in the Forest Park subdivision offsetting the lower density in the Kunda Park Phase 4 subdivision to meet overall greenfield density targets. Strong objections were received regarding two proposed road crossings of the Steve Bauer Trail shown in the plan.
- January 11, 2021 Council passed the Town Trail System Motion which resolved in part that, "no new road crossings over the Steve Bauer Trail or the Gerry Berkhout Trail shall be permitted by the Town".
- Further work was undertaken by the developer to consider alternatives to the two (2) trail road crossings submitted in the Applications. Three (3) alternative proposed network options were explored and considered by

<p>Sterling's transportation consultant R.V. Anderson Associates Limited in a Transportation Review. This analysis was provided to Council with a request for an exemption to the Trail Resolution to permit one (1) road crossing of the Steve Bauer Trail on October 4, 2021. Council did not pass the resolution to permit the exemption and referred the report back to Staff for additional information.</p> <ul style="list-style-type: none"> • Council considered Report 2021-0200 on December 6, 2021 which included additional analysis on possibilities for crossing the Steve Bauer Trail and recommended an exemption to the Trail Crossing Resolution. The exemption was again refused.
<p>2021 – Present</p> <ul style="list-style-type: none"> • The developer undertook revisions to the Forest Park Draft Plan Subdivision to allow it to move forward independently from the Kunda Park Phase 4 with transportation and servicing connections no longer included with the exception of designing the stormwater infrastructure to accept flows from future development of Kunda Park Phase 4. The Forest Park Draft Plan of Subdivision and zoning by-law amendment were conditionally approved by Council on April 4, 2022 with Council directing that another public meeting be held regarding Kunda Park Phase 4 to address public comments. The developer is working on meeting the conditions of draft plan approval. • The developer revised the Draft Plan of Subdivision for Kunda Park Extension 4 and supporting studies to address the Trail Crossing Resolution (the current plan). The Revised Plan does not include any road crossings of the Steve Bauer Trail. Instead, the subdivision includes a road connection to Stella Street (as in the May 2020 plan) and a southerly road connection to Kunda Park Boulevard (as in iterations of the plan presented in 2019 and earlier). The southerly road connection to Kunda Park Boulevard is permitted by a Class Environmental Assessment that was approved by the Ministry of the Environment in 2018. The Revised Plan includes a 10 m wide pedestrian/emergency connection to the Steve Bauer Trail mid-block between the locations where the road connections were proposed in the May 2020 Plan. The Revised Plan also includes a 15 m watercourse block where a naturalized channel will be located to convey overland flows northerly towards the naturalized channel which has already been constructed within the Forest Park Subdivision for the purpose of receiving these (and other) flows. • Town Planning staff received the revised draft plan of subdivision and zoning by-law amendment (the current applications) applications in December 2022. Those plans were circulated to commenting agencies, Town Departments and the public for comments. A public meeting was held on February 13, 2023.

Policy Review:

Planning Act, 1990

Section 3 of the *Planning Act* requires that, in exercising any authority that affects a

planning matter, planning authorities “shall be consistent with the policy statements” issued under the *Planning Act* and “shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be”.

Section 34 of the *Act* allows for consideration of amendments to the zoning by-law. Section 51 of the *Act* allows for consideration of a plan of subdivision.

Section 51 (24) of the *Act* states that in considering a draft plan of subdivision regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to:

- The effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;
- Whether the proposed subdivision is premature or in the public interest;
- Whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- The suitability of the land for the purposes for which it is to be subdivided;
- The number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- The dimensions and shapes of the proposed lots;
- The restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- Conservation of natural resources and flood control;
- The adequacy of utilities and municipal services;
- The adequacy of school sites;
- The area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- The extent to which the plan’s design optimizes the available supply, means of supplying, efficient use and conservation of energy; and,
- The interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this *Act*.

Analysis of Section 51(24) of the Planning Act

Effect of Development on Matters of Provincial Interest

Planning staff have reviewed the applications to ensure that they are consistent with the Provincial Policy Statement, 2020 and conform to applicable Provincial plans. In

Planning staff's opinion, the development addresses all matters of Provincial interest outlined in Section 2 of the Planning Act.

Whether the Proposed Subdivision is Premature or in the Public Interest

The proposed subdivision is not premature and is in the public interest. Development is occurring in an orderly and logical fashion in this area consistent with the Town Official Plan and the creation of additional housing units is a societal need. This subdivision will complete the Kunda Park development that started 50+ years ago.

Whether the Plan Conforms to the Official Plan and Adjacent Plans of Subdivision

The draft plan of subdivision conforms to the Official Plan. The plan allows for connectivity to the existing Kunda Park subdivisions.

Suitability of Land for the Purposes of which it is to be Subdivided

The subject land is a Built-up Area within Fonthill's settlement area that has long been planned for residential development and use. The environmental features are being conserved and will become public lands to ensure their long-term protection through the current applications. The lands are suitable for the uses proposed.

The Number, Width, Location, Proposed Grades, Elevations of Highways, their Adequacy, and the Highways linking the Highways in the Proposed Subdivision with the Established Highway System

The subdivision will have access from the extension of Kunda Park Boulevard and via the existing street connection off Stella Street. The proposed street networking provides connectivity to the established highway system, adjacent development and generally conforms to the street patterns of the surrounding area. Grading and servicing will also be reviewed further and approved through conditions of draft plan approval.

Dimensions and Shapes of the Proposed Lots

The proposed subdivision proposes regularly shaped lots that will allow the appropriate siting of the future dwellings, driveways, amenity and parking areas.

The Restrictions or Proposed Restrictions, if any, on the Land Proposed to be Subdivided or the Buildings and Structures Proposed to be Erected on it and the Restrictions, if any, on Adjoining Land

There are no restrictions on the residential land proposed to be subdivided, however, the provincially significant wetlands and woodlands will have development restrictions that will preclude development that will be implemented through the proposed zoning by-law.

Conservation of Natural Resources and Flood Control

The proposed draft plan of subdivision allows for the conservation of natural resources including the significant wetlands and woodlands and appropriate measures for flood control and management will be a condition of approval. Stormwater management plans will be reviewed and approved by Public Works as part of the draft plan conditions.

The Adequacy of Utilities and Municipal Services

The applications have been circulated to utility companies and no comments have been received to indicate that services are not adequate.

The Adequacy of School Sites

The development applications were circulated to the local school boards and no comments were received to indicate that the school sites are not adequate. The proposed development is in proximity to a neighbourhood public elementary school.

Adequacy of Parkland and Open Space, Community Facilities, and Other Amenities, as Required (D5.3)

The Town obtained parkland dedication for this development through a previous stage of the Kunda Park developments. This neighbourhood will also access the future park in the adjacent Forest Park subdivision. Sidewalks will be provided for pedestrian movements and a pedestrian connection to the Steve Bauer Trail system are also proposed to provide access to that open space trail network. The Community Centre is also located within Fonthill.

The Area of Lane, if any, Within the Proposed Subdivision that, Exclusive of Highway, is to be Conveyed or Dedicated for Public Purposes

Through previous approvals of the Kunda Park Phase 3, the Town received land for parkland dedication in accordance with the *Planning Act* requirements that contributed to the parkland requirements for this phase of the Kunda Park development.

The Extent to which the Plan's Design Optimizes the Available Supply, Means of Supplying, Efficient Use and Conservation of Energy

The design of the proposed development optimizes the available land supply and will aid in the efficient use and conservation of energy.

The Interrelationship between the Design of the Proposed Plan of Subdivision and Site Plan Control Matters Relating to any Development on the Land, if the Land is also Located Within a Site Plan Control Area designated under Subsection 41(2) of This Act.

The proposed single detached lots proposed by the plan of subdivision will not be subject to site plan control.

Greenbelt Plan, 2017

The subject parcel is in an identified settlement area that is outside of the Greenbelt Plan Area; therefore, the policies of the Greenbelt Plan do not apply.

Niagara Escarpment Plan, 2017

The subject parcel is not located in the Niagara Escarpment Plan Area; therefore, the Niagara Escarpment Plan policies do not apply.

Provincial Policy Statement, 2020

Despite the original draft plan of subdivision application being made in 2002, there are no transition provisions in respect of the application of the Provincial Policy Statement (PPS). Part II Legislative Authority – states Section 3 of the Planning Act requires that decisions affecting planning matters “shall be consistent with” policy statements issued under the Act. The 2020 PPS applies to all decisions rendered after May 1, 2020 (subs. 4(1)), and these policies represent minimum standards which shall be implemented in a consistent manner with the Ontario Human Rights Code (subs. 4(4.4)).

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 subject land is in a ‘Settlement Area’ according to the PPS. Policy states that settlement areas shall be the focus of growth and their vitality and regeneration shall be promoted.

Policy 1.1.3.2 states that land use patterns within settlement areas shall be based on densities and mix of land uses that efficiently use land and resources, are appropriate for and efficiently use infrastructure and public service facilities, minimize negative impacts to air quality and climate change and promote energy efficiency, prepare for the impacts of a changing climate, support active transportation and are transit and freight supportive.

Policy 1.1.3.3 provides for the promotion of intensification and redevelopment accommodating a significant supply and range of housing options where it can be accommodated taking into account the building stock, availability of existing and planned infrastructure and public service facilities required to accommodate the needs of the development.

The proposed draft plan of subdivision will help to facilitate a mix of housing options when considered along with the Forest Park subdivision to the east and within the Settlement Area as a whole. The density of the development provides for efficient use of land and planned/existing infrastructure that minimizes land consumption and costs of servicing. Further, the development of the property for single detached dwellings will be transit and active transportation supportive as it will be well served by sidewalks, bike lanes and paths (both planned and existing). There are adequate public service facilities, including a planned neighbourhood park within the Forest Park subdivision to the east. The park will be accessible by planned pedestrian and cyclist connections. The Community Centre, schools and library are also located within a short distance. The dwellings will be required to meet the energy efficiency requirements in the Ontario Building Code.

Based on this information, the proposed draft plan of subdivision and zoning by-law amendment are consistent with the Provincial Policy Statement subject to approval of the recommended conditions of draft plan approval.

Growth Plan for the Greater Golden Horseshoe, 2020

Under the *Places to Grow Act*, 2005, Ontario Regulation 311/06, subsection 3(4) states that a matter (application) commenced before June 16, 2006, shall be continued and disposed of as if the (Growth) Plan had not come into effect.

Subsection 2(h) states that draft plan of subdivision applications under section 51 of the *Planning Act* is deemed to have commenced on that day the application is made.

Therefore, because the original draft plan of subdivision application (file 26T19-020-02) was made in 2002, and has remained active ever since, the 2006, 2017, 2019 and 2020 Growth Plans are not applicable in consideration of the subdivision application.

However, the Zoning By-law Amendment application (file AM-03-2020) was submitted in 2020 and therefore is bound by the policies of the current Growth Plan.

The updated Growth Plan took effect on May 16, 2019 and requires that all planning decisions made on or after that date shall conform to policies of this plan. The Plan was further amended on August 28, 2020. The document informs decision-making regarding growth management and environmental protection in the GGH. The subject parcel is located within a 'Settlement Area' according to the Growth Plan. Guiding principles regarding how land is developed:

- Support the achievement of *complete communities* to meet people's needs through an entire lifetime.
- Prioritize *intensification* and higher densities to make efficient use of land and *infrastructure*.
- Support a range and mix of housing options, including second units and *affordable* housing, to serve all sizes, incomes, and ages of households.
- Provide for different approaches to manage growth that recognize the diversity of communities in the GGH.
- Integrate climate change considerations into planning and managing growth.

Policy 2.2.1 Managing Growth – 2. Forecasted growth to the horizon of this Plan will be allocated based on the following:

- a) the vast majority of growth will be directed to *settlement areas* that:
 - i. have a *delineated built boundary*;
 - ii. have existing municipal water / wastewater systems; and
 - iii. can support the achievement of complete communities.

Policy 2.2.1.4 supports the achievement of complete communities that feature a diverse mix of land uses, including residential and employment uses and convenient access to local stores, services, and public service facilities; improve social equity and overall quality of life for people of all ages, abilities, and incomes; provide a diverse range and mix of housing options, including second units and affordable housing. Including expanding convenient access to a range of transportation options including active transportation, public service facilities, co-located and integrated in community hubs, an appropriate supply of safe, publicly accessible open spaces, parks, trails and other recreational facilities and healthy, local and affordable food options including urban agriculture; ensure the development of high quality compact built form, an attractive and vibrant public realm through site design and urban design standards; mitigate and adapt to climate change impacts, build resilience, reduce greenhouse gas emissions and contribute toward the achievement of low

carbon communities and integrate green infrastructure and low impact development.

Policy 2.2.7.2 Designated Greenfield Areas – states that the minimum density target applicable to the designated greenfield area of Niagara Region is 50 people and jobs combined per hectare.

The requested zoning by-law amendment will allow single detached residential uses in the subdivision and recognize the areas which are to be environmentally protected or used for public access. The single detached dwellings will contribute to the creation of a complete community and meet the greenfield area density target when considered along with the mix of housing types and densities being provided in the Forest Park development to the east (also owned by Sterling Realty). The proposed sidewalks, bike lanes and trail connection will provide connectivity to existing commercial areas and community facilities, future neighbourhood parks, bike lanes and off-road trails. The development can be served by existing transit systems.

The environmental protection zoning for the wetland will ensure that no development occurs within this area which is consistent with Policy 2.1.4(a). While not applicable to the subdivision application, the requested zoning by-law amendment is consistent with the Growth Plan for the Greater Golden Horseshoe subject to approval of the recommended conditions of draft plan approval.

Niagara Region Policy Plan (2001)

The draft plan of subdivision application file (26T19-020-02) remains active from its original application date of May 2002; therefore, the former Regional Policy Plan of 2001 applies to this application. The Regional Policy Plan designated the subject lands as within the Fonthill Urban Area Boundary.

Objective 5.11 seeks to contribute to the overall goal of providing a sufficient supply of housing that is affordable, accessible, adequate, and suited to the needs of a full range of types of households and income groups.

The proposed draft plan of subdivision will contribute to a sufficient housing supply. When considered along with the mix of housing types (apartments, townhouses, single detached dwellings) in the Forest Park subdivision, the single detached dwellings will serve different types of households and income groups.

Niagara Region Official Plan (Consolidated, August 2014)

The Zoning By-law Amendment application file (AM-03-2020) was submitted in 2020 and is bound by the Regional Official Plan policies (consolidated 2014).

The Regional Official Plan designates the subject land as a 'Designated Greenfield Area' within the Urban Area Boundary.

Policy 4.C.6.1 states the Region will require a minimum combined gross density target of 50 people and jobs per hectare across all *Designated Greenfield Areas*, excluding Environmental Protection and Conservation Areas.

Policy 4.G Urban Growth – states Niagara will build more sustainable, complete communities by:

- Encouraging mixed and integrated land uses;
- Making efficient use of land, resources and infrastructure;
- Promoting compact, transit support development friendly to active transportation;
- Building better *Greenfield* neighbourhoods;
- Fostering *development* that conserves natural resources and maintains or enhances natural systems.

Policy 4.J.4 states the Region encourages private realm site design that addresses public safety, active transportation, landscaping, and human scale in buildings facing public space.

Policy 11.A.1 states the Region encourages the provision of a variety of housing types within urban communities and neighbourhoods to serve a variety of people as they age through the life cycle.

Policy 11.A.2 states the Region encourages the development of attractive, well designed residential construction that:

- a) Provides for *active transportation* within neighbourhoods with connections to adjacent residential and commercial areas, parks and schools.
- b) De-emphasizes garages, especially in the front yard.
- c) Emphasizes the entrance and points of access to neighbourhoods.
- d) Is accessible to all persons.
- g) Provides an attractive, interconnected and *active transportation* friendly streetscape.
- h) Contributes to a sense of safety within the public realm.
- i) Balances the needs for private and public space.
- j) Creates or enhances an aesthetically pleasing and functional neighbourhood.
- k) Encourages a variety of connections based on transportation mode

between land uses based on diverse transportation modes, allowing people to move freely between the places where they live, work and play.

The requested zoning by-law amendment will contribute to the creation of a complete community. The single detached dwellings with smaller lot areas will act as a transition from the larger lot single detached dwellings in the earlier phases of the Kunda Park development into the wider range of housing types and densities in East Fonthill. The street pattern will connect to existing and future neighbourhoods. Active transportation is supported through the sidewalks, inclusion of bike infrastructure and pedestrian connection to the Steve Bauer Trail and future park (Forest Park subdivision) as well as the off-road trail along the watercourse.

Municipal servicing will be in keeping with Regional and Town servicing plans. The minimum density target of 50 jobs and persons per hectare for greenfields is being achieved when considered along with the higher density proposed for the Forest Park subdivision at a total of 59 persons and jobs per hectare. The development will be serviced by municipal sewage and water services. The future building designs will be energy efficient meeting the requirements of the Ontario Building Code. The development will be eligible for curbside Regional waste collection and the road network has been designed to accommodate the collection vehicles. The requested zoning will deemphasize the garages by requiring them to be recessed from the front building face.

Regional and Niagara Peninsula Conservation Authority staff have requested conditions of approval (included in Appendix B) regarding required buffers and landscape /restoration plans to ensure that natural resources and systems are being maintained.

For these reasons, it is Planning staff's opinion that the zoning by-law amendment application conforms to the policies of the Regional Official Plan subject to the conditions in Appendix B.

Niagara Region Official Plan, 2022

For information purposes, the property is designated Designated Greenfield Area in the Niagara Region Official Plan, 2022.

Designated greenfield areas shall achieve a minimum density of 50 residents and jobs combined per hectare as measured across the entire region (Policy 2.2.2.23) and excludes areas constrained by environmental features, utility corridors, cemeteries, and employment areas.

Policy 2.2.2.25 indicates that designated greenfield areas will be planned as complete communities by:

- a) ensuring that development is sequential, orderly and contiguous with existing built-up areas;
- b) utilizing proactive planning tools in Section 6.1 and Section 6.2, as appropriate;
- c) ensuring infrastructure capacity is available; and
- d) supporting active transportation and encouraging the integration and sustained viability of public transit service.

The applications were received prior to the Niagara Region Official Plan, 2022 coming into effect and therefore, are not subject to it.

Pelham Official Plan (1974)

The draft plan of subdivision file (26T19-020-02) remains active from its original application date of May 2002; therefore, the former Town Official Plan (1974) applies to this application. The 1974 Official Plan designated the subject lands as 'Urban Residential'.

Policy 1.20.A.3 states that the Town, in the review of development applications and the provision of various housing types, shall ensure that lot sizes and dwelling types, sizes and tenure will be based not only on historic household growth for the Town but also the unmet housing needs as identified in the municipal housing statement.

Policy 1.20.A.4 states Council shall endeavor, even though a limited area is available for development, to achieve the following housing mix:

- Low density (up to 15 units / hectare) 70% single & semi-detached
- Medium density (15 – 25 units / hectare) 20% multiple attached & low- rise apartments
- High density (35 – 65 units / hectare) 10% high rise apartments

Policy 1.20.A.5 states the Town will require that sufficient sites are available to ensure a minimum 25% of all potential new housing units are affordable, as defined in the Provincial Housing Statement on Land Use Planning for Housing. Sites for affordable housing will include housing with direct ground access as well as apartments of varied styles and densities.

Policy 1.20.A.8 states in the provision of a housing mix, varying lot sizes and tenure, the Town will consider applications for undersized single detached lots and semi-detached units provided the building designs and densities of proposals consider the character and identity of surrounding residential lands.

Policy 1.20.A.14 states Council, in the approval of plans of subdivisions, shall

ensure when feasible, that the affordable housing component be serviced as an integral part of the overall development.

The draft plan of subdivision provides for single detached dwellings with smaller lot areas than those on John and Stella Streets and Kunda Park Boulevard resulting in a gentle increase in density when compared to the earlier phases of the Kunda Park development. The development acts as a transition to the higher density and mixed housing types provided in Forest Park. While the lots are not anticipated to be affordable, there is potential for second dwelling units in accordance with the Town's policies and regulations which could provide an affordable option and the ability for some rental tenure. Single detached dwellings will be compatible with the existing primarily single detached neighbourhood.

It should be noted that Policies 1.20.A.4 and 1.20.A.5 set targets for housing mix and having land available for affordable units across the Urban Residential area of the Town rather than on this specific property.

Based on these considerations, it is Planning staff's opinion that the draft plan of subdivision conforms to the policies of the Pelham Official Plan, 1974.

Pelham Official Plan (2014)

The Zoning By-law Amendment application file (AM-03-2020), submitted in 2020, is bound by the current Town Official Plan policies in effect (2014). The local Official Plan designates the subject land as 'Urban Living Area / Built Boundary' with a 'Greenfield Overlay' as well as Environmental Protection One.

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.

Policy A2.1.2 Natural Environment – states the natural environment objectives of this Plan are to make planning decisions that consider the health and integrity of the broader landscape as well as the long term and cumulative impacts on the ecosystem.

Policy A2.2.2 Growth & Settlement – states that it is a goal of this Plan to encourage intensification and redevelopment within the *Urban Area* specifically in proximity to the Downtown.

Policy A2.3.2 Urban Character – stated objectives of this Plan include:

- To respect the character of existing development and ensure that all applications for development are physically compatible with the character of the surrounding neighbourhood.
- To encourage the intensification and use of the lands within the Fonthill Downtown core and to make every effort to improve its economic health by encouraging redevelopment and broadest mix of compatible uses.
- To maintain and enhance the character and stability of existing and well-established residential neighbourhoods by ensuring that redevelopment is compatible with the scale and density of existing development.
- To encourage the development of neighbourhoods which are compact, pedestrian-friendly and provide a mix of housing types.

Policy A2.5.2 Infrastructure – stated objectives of this Plan include maintaining existing infrastructure in a manner that is cost effective and contributes to the quality of life of citizens.

Policy A2.7.2 Cultural Heritage – states it is the Plan’s objective to ensure that the nature and location of cultural heritage and archaeological resources are known and considered before land use decisions are made.

Policy B1.8.3 Greenfield Overlay (Lot 173) – states it is a Provincial and Regional requirement that *Greenfield* designated lands be developed to attain a minimum population / employment density of 50 people and jobs per hectare. It is realized that not every site will be able to achieve this target. The Town will have flexibility on a site-by-site basis; however, the overall density target will still need to be achieved.

For the subject lands (Lot 173), any application for development shall demonstrate that these sites can achieve the required population and employment density (50 people & jobs / hectare). The 2020 concurrent submission of this application and the Forest Park Draft Plan of Subdivision application was to demonstrate how current planning policies will be achieved despite maintaining an aging draft plan of subdivision application which must continue to be qualified against a ‘mishmash’ of current and outdated policy sets.

With respect to the plan objectives above, Planning staff can advise that impacts on the natural heritage system have been considered and are further discussed below. Cultural heritage and archaeological resources have been documented/conserved through archaeological assessments and obtaining the required clearance from the Ministry of Heritage, Tourism, Culture and Sport. The proposed zoning by-law amendment proposes a compact urban form and a mix of housing types (when considered with Forest Park). The scale and density permitted through the

requested zoning will be compatible with the character of the established residential neighbourhood.

The zoning will facilitate development meeting the minimum greenfield density requirement of 50 persons and jobs per hectare when considered with the Forest Park subdivision (same ownership) by achieving 59 persons and jobs per hectare overall.

All new development will be serviced by municipal sanitary and water as well as utilities.

Schedule B1 identifies a Highly Vulnerable Aquifer affecting the subject lands. As a result, a variety of uses are prohibited from these lands, none of which are proposed by the applicant.

Policy B3.2 Environmental Protection One (EP1) – states the purpose of this designation is to protect and enhance the ecological integrity of the natural heritage features identified by the Region. The EP1 designation includes Provincially Significant Wetlands (PSW) and the significant habitat of endangered or threatened species outside of the Greenbelt Plan, but not within the Natural Heritage System of the Greenbelt Plan. Policy B3.2.4.3 states that lands within 120 m from the boundary of a PSW are defined as ‘adjacent lands’ for the purposes of this policy. No development or site alteration shall be permitted on adjacent lands unless an Environmental Impact Study (EIS) demonstrates that there will be no negative impact on the feature or its ecological functions. The Region, in consultation with the NPCA and the Town shall approve any EIS prepared to address impacts on development or site alteration within adjacent lands.

An EIS Addendum prepared by Beacon Environmental (dated September 2022) was prepared in response to these key natural heritage feature policies. The studies recommend a 15 metre buffer be maintained in addition to implementation of mitigation measures. NPCA and Regional staff have indicated they have no objections to approval of the applications subject to recommended draft plan conditions (including the recommended buffer and mitigation measures) which have been included in Appendix B.

Policy D5.4.2.2 Dedication of (park) Land through the Development Process – states Council will require the dedication of 5% of the land within a residential plan of subdivision for parkland. Alternatively, Council may require cash-in-lieu of parkland instead, as deemed appropriate. Lands within any Environmental Protection designation shall not be considered as part of the required minimum dedication of parkland.

While the draft plan of subdivision is not subject to the Town's 2014 Official Plan, land for parkland was dedicated to the Town at the corner of John Street and Beechwood Crescent as a condition of approval of an Kunda Park Phase 3 development that was to also be credited toward these development lands. Following dedication to the Town, the majority of the park lands were deemed to be a Provincially Significant Wetland by the Province and therefore, no development or site alteration is permitted that would allow their use as an active park, it may be used as a passive park, however. The lands remain in the Town's ownership. As a result of the land dedication in Kunda Park Phase 3, the Kunda Park phase 4 development is not subject to the requirement for parkland dedication. Future residents (and current residents in earlier phases of the development) will have access to the planned park in the Forest Park subdivision to the east.

Based on the policies and analysis above, Planning staff are of the opinion that the zoning by-law amendment application conforms to the policies of the Town's Official Plan.

Pelham Zoning By-law No. 1136 (1987)

The subject lands are zoned 'Residential 1' (R1) according to Schedule 'A5' of the Zoning By-law. To satisfy the 1974 local Official Plan requirements and other applicable planning policies, the developer has applied for a site-specific Zoning By-law Amendment to rezone the subject lands to 'Residential 2' (R2) and 'Environmental Protection' (EP).

The proposed 'EP' zone would apply to lands that support the Provincially Significant Wetland complex, woodland, and the naturalized channel. The Residential Two zone permits one single detached dwelling and uses, buildings and structures accessory thereto and home occupations. The requested site-specific zone regulations for the Residential Two zone are detailed in Table 2.

Table 2: Site-Specific R2 Zone Regulations

14.2 R2 Zone Requirements	Standard R2 Regulation	Requested Site-Specific R2 Regulation
(a) Minimum Lot Area	360 m ²	450 m ²
(b) Minimum Lot Frontage	12 m; 15 m corner lot	15 m
(c) Maximum Lot Coverage	50%	50% two storey; 60% bungalow
(d) Minimum Front Yard	6.5 metres	4.5 m to building face; 6 m to garage

14.2 R2 Zone Requirements	Standard R2 Regulation	Requested Site-Specific R2 Regulation
(e) Minimum Interior Side Yard	1.5 m on one side and 3 m on the other side where no attached carport or garage; 1.5 m with an attached carport or garage	1.2m on one side and 3m on the other side where there is no attached carport or garage; 1.2 m with an attached carport or garage
(f) Minimum Exterior Side Yard	Greater of 5 m from the side lot line or 15 m from the centre line of the road	3m to dwelling; 6m to garage
(g) Minimum Rear Yard	7.5 metres	No change
(h) Maximum Height for a Dwelling	10.5 metres	No change
(i) Minimum Ground Floor Area	(i) one storey 93 m ² ; (ii) two storeys 55 m ²	No change

The Environmental Protection zones will prohibit development and site alteration except for the naturalized channel which will allow for maintenance activities.

The requested zoning by-law amendment will permit the uses proposed in the draft plan of subdivision as supported by the Official Plan and the technical studies (Environmental Impact Studies). The site-specific Residential Two zone will facilitate a built form that is compatible with the existing residential neighbourhood in terms of height and massing and apply reasonable setbacks. It is Planning staff's opinion that the requested zoning change should be supported.

Pelham Zoning By-law 4481 (2022)

Council approved the new comprehensive Zoning By-law on August 30, 2022. The by-law is under appeal and therefore Zoning By-law 1136 (1987) remains in effect. For Council's information, the property is zoned Residential One and Environmental Protection One in Zoning By-law 4481(2022).

Submitted Reports:

Environmental Impact Study Addendum prepared by Beacon Environmental Limited dated September 2022

The Study concludes that the revised draft plan of subdivision will not result in significant negative impact to natural heritage features subject to the recommended mitigation measures. The recommended mitigation measures have been included as conditions of approval requested by the Niagara Region and Niagara Peninsula Conservation Authority. Those agencies have also requested additional conditions that will have to be satisfied prior to final approval of the subdivision.

*Functional Servicing Report prepared by Upper Canada Consultants
Engineers/Planners dated November 2022*

*Forest Park / Kunda Park Storm Water Control Plan prepared by Upper Canada
Consultants Engineers/Planners dated June 27, 2022*

The report indicates that the land will be serviced by extending the 150 mm diameter watermain from Stella Street and Kunda Park Boulevard. The sanitary service for the northern portion of the development will come from the Forest Park development to the east in the location of the proposed pedestrian connection (Block 82) and the sanitary service for the southern portion through an extension of the 200mm diameter sanitary sewer on Kunda Park Boulevard. Stormwater flows from the northern portion of the lands will be conveyed to the proposed Forest Park Storm water management Facility through the naturalized channel and the existing culvert under the Steve Bauer Trail. The southern portion of the property will continue to convey flows southerly, ultimately to the Timber Creek Estates Storm Water Management Facility. This is demonstrated on the Storm Water Control Plan. The report concludes that there is adequate municipal servicing for this development.

*Planning Justification Report prepared by Upper Canada Consultants
Engineers/Planners dated May 1, 2020*

The report concludes that the Kunda Park Extension 4 Plan of Subdivision conforms to applicable Town of Pelham Official Plan objectives and policies, including those related to permitted uses, density, housing variety and affordable housing. The site-specific zoning has been proposed that will implement the proposed development concept, promote a compact/pedestrian oriented urban form that places dwellings and porches (and not garages) at the street and will enable the inclusion of affordable housing.

It is the Planner's professional opinion that the application is an appropriate development proposal that is consistent with the Provincial Policy Statement and conforms with applicable policies of the Region of Niagara Official Plan and Town of Pelham Official Plans. The application proposes compatible and appropriate development for the subject lands, represents good planning and should be supported.

*Stage 1 Archaeological Assessment prepared by Detritus Consulting Ltd. dated
September 7, 2016*

The study recommended further archaeological work for one archaeological site (AgGt-51). However, this site and its buffer lands (10m) fall entirely outside of the subdivision lands (approximately 150m to the north). The Ministry of Heritage Sport Tourism and Culture Industries provided an acknowledgement letter.

Recommended warning clauses related to archaeology have been included in Appendix B.

Digital copies of the reports are available by contacting the Planning Division or at the following link: <https://engagingpelham.ca/kunda-park-phase-4>

Planning staff note that there are many previous technical reports that were prepared to support past versions of the draft plan of subdivision (i.e., 8 Environmental Impact Studies/Addendums and several Functional Servicing Reports). These reports have been superseded by the reports above which address the revised draft plan of subdivision.

Agency Comments:

The revised applications were circulated to commenting agencies and Town Departments. The following comments have been received:

Niagara Peninsula Conservation Authority

NPCA staff have no objection to the applications subject to the requested conditions (Appendix C).

Niagara Region Planning & Development Services

Regional staff have no objection to the proposed changes to the Draft Plan of Subdivision from a Provincial and Regional perspective, subject to the previous comments provided on September 28, 2020, the updated conditions outlined in Appendix 1, and confirmation that the extent of natural heritage features and their boundaries are placed into an appropriately restrictive environmental zone.

Regional staff request that a zoning schedule be circulated prior to approval so that staff can confirm that our requirements related to natural heritage have been sufficiently addressed.

Town Public Works No comments. Further review will take place at the detailed engineering design stage.

All requested conditions of approval have been included in Appendix B.

Public Comments:

On January 23, 2023, a public meeting notice was circulated to all property

owners within 120 metres of the property's boundaries. In addition, 4 public notice signs were posted facing Port Robinson Road, Stella Street, John Street/Beechwood Crescent and Beechwood Crescent/Kunda Park Boulevard. Notices were also provided to those who had commented on the applications in 2020. A public meeting was held on February 13, 2023. The following is a summary of comments that have been received at the time of writing of this report in response to the revised applications:

Doug Elliott

Concerned about safety of those exiting Stella Street to turn left on Pelham Street. Believes lights are warranted and that Kunda Park Boulevard and Stella Street should be resurfaced due to damage. Would like to know what type of artifacts were found on portion of property outside of the subdivision plan along Port Robinson Road and why no street connection. Merritt Road should also be fixed before construction of the subdivision.

Muriel Heska

Concerned that the majority of traffic west and north to Regional Rd. 20 and downtown Pelham will flow through Vera and north Stella Street which are not designed or constructed to meet the additional traffic load. Would like to know the plan for upgrading the old Kunda Park area to current urban standards?

Concerned about access for heavy load vehicles during the construction phase. Wants the new PSW crossing must be designed and built to meet requirements for all vehicles and constructed at the start of development to provide main access to the northern Phase 4 area (67 lots). Questions whether heavy load construction vehicles will be limited to this southern access road to prevent more damage to the roads and properties on Vera/north Stella? The north Stella St. area also has access to Glynn A Green school yard and is used by children walking to school and for playground/soccer field access. Safety is a concern with increased traffic/construction traffic.

Questions how deep will the proposed naturalized channel be? How will soil erosion be mitigated? Will the ditch have standing water? Will it be fenced for safety?

Does site-specific Residential Two (R2) zoning allow concerns of current property owners on the northeast side of Stella (R1 zoning) to be included in site-specific requirements for the new abutting R2 properties? These concerns include building height, drainage, setbacks. If so, these concerns need to be addressed.

There is no mention in this revised draft plan of the strip of land in the north which is part of the Kunda Park Phase 4 subdivision (east of Glynn A Green school and west

of the Steve Bauer Trail). How will this land be developed? (Perhaps a park with archeological site?)

Colleen Kenyon

The draft plan has improved significantly through community input, Council support, and Sterling Realty's willingness to undertake revisions in good faith.

Concerned about the extreme wear and tear on the existing roads if they are to be used for heavy machinery and transport vehicles. Improvements to the roads and sidewalk will be needed to ensure the safety of pedestrians and cyclists along Vera, John, and Stella Streets, and Kunda Park. Concerned about potential flooding of the street, sidewalk, and homes on the east side of Stella Street that could result from the added load on the storm water and drainage systems.

Requests protections remain in place on all lands designated EP1 and EP2 and that tree canopy, wildlife habitat and corridors, and groundwater systems be taken into account during the construction of Phase 4.

Bill Heska

Concerned that no formal response to date has been provided to citizens and questioned how the new Councillors will be informed of the history of the application so they can make informed decisions.

Noted that the initial Pelham Today article had an incorrect plan and provided none of the support information on the proposed subdivision plan. Wants live public meetings reconvened.

Questioned if there are any changes to what was presented regarding the site-specific R2 zone. Questions regarding the naturalized channel for stormwater - how deep will the channel be, how will soil erosion be mitigated, will the ditch have standing water, will the channel be fenced for safety?

Noted that the roadway plan is very similar to Alternative A that was presented by UCC at the Public Information meeting on Jan. 17, 2018, however they had proposed that John Street would be extended to the east to intersect Kunda Park Blvd. with minimal impact on the PSW. Why is this extension not included in the new subdivision proposal? When will the old Kunda Park area be reconstructed to current urban standards?

Will the new PSW crossing be designed and built to meet requirements for all vehicles? Will the crossing be constructed at the start of development to provide main access to north area Phase 4 (67 lots). On the plan, it appears the crossing is not as wide as Street A. Will there be pedestrian traffic walkway over the PSW?

A 10m pedestrian/emergency connection to the Steve Bauer Trail has been added to the plan per UCC letter, but the location is not shown on the plan.

The plan shows the existing Institutional area (Glynn A Green School) to the north. Questioned the status of the strip of land which is part of the Kunda Park Phase 4 east of the school and west of the Steve Bauer Trail. At one time the primary roadway access for the subdivision was proposed through the area. How will this land be developed -- park with archaeological site, relocate SW Pond and/or park from Forest Park, relocate north parking area for Steve Bauer Trail?

Chuck Monger

Wants multiple entrances/exits to the subdivision for safety even if it requires crossing the trail. Has safety concerns about cars parking on the street.

Barbara Arndt & Neil Stanley

Concerned how the property be drained? Concerned that properties will become mosquito infested and waterlogged.

Concerned that all traffic will go through existing residential neighbourhoods, one of which is a street which is access to a primary school yard. Increased traffic means concern about damage to existing homes and homeowners during construction. Access for construction and to the main part of Pelham MUST be through the Station Street extension.

Concerned that infrastructure is inadequate and who will be responsible for necessary upgrades.

Concerned about increased costs to residents because of Bill 23.

Suggests council and the developer to consider moving the Steve Bauer trail to the vacant area behind Glynn A. Green School and the houses on Stella Street which would leave the area along the existing trail open for the construction of the Kunda Park development as well as the Station Street Extension.

Would like zoning to remain R1.

Christine Kreutzer

Concerned about access in and out of the new development. Limited access in and out of the northern end of the development creates additional safety risks with a school located at the north end and pedestrian traffic limited to sidewalks located on only one side of the street. Peak travel times will result in bottlenecks on Stella, Vera and John Street. Traffic could be better routed to reduce congestion, increase safety, bypass established neighborhoods and provide a more direct route to Hwy 406 via

Regional Road 20. The northern strip of land located within the development, east of Glynn A. Green School and west of the Steve Bauer Trail, could provide a direct route north out of the development. What is the plan for this land?

Will the wetland crossing have the same capacity for weight and volume of traffic, both vehicular and pedestrian? A roadway extending John Street across the PSW and connecting to the development was previously proposed. Why is this no longer included in the plan?

Concerned about construction vehicle routes and use of roads.

Lisa Erickson

Concerned about road safety on Stella Street for students travelling to school as well as construction impacts such as dust, vibration, hours of work. Also concerned about lighting impacts from future streetlights.

Dave Nicholson

Believes the pedestrian path is too wide and that 2 metres should be sufficient.

Graham Pett

Pleased with protection of Steve Bauer Trail and surrounding natural heritage. Emphasized importance of connectivity with the wetland. Happy with connectivity between the neighbourhood and the trail system. Requested low impact development principles be used. Would have liked more density which is needed. Requested that future Station Street extension be done while taking the absolute minimum of the trail and trees.

Mike Jones on behalf of Pelham Advocates for Trees and Habitat

Generally supportive of the revised draft plan of subdivision. Requested tree planting along the naturalized channel and west side of the Steve Bauer Trail. Want to ensure that the wetland remains connected under the road crossing. Want disruption and closing of the Steve Bauer Trail to be minimized during construction. Want low impact development incorporated into the final engineering design. Want tree removal minimized and growing tree canopy to be prioritized. Provided comments regarding engineering design for Forest Park.

Magdalena Woszczyzna

Supportive of reduced number of lots in the proposed development and wildlife corridor connecting the wetlands and greenspace. Supports for the Kunda Park connection as it will keep construction vehicles away from Stella Street. Want trees preserved and suggested a specialist be hired to conduct an assessment.

Karen Guzzi

Questions why no townhouses are planned for the proposed development. Believes intensification should be shared by all residents of Pelham.

Staff Comments:

In response to public comments, Planning staff provide the following:

Traffic congestion and safety

The development is not expected to generate levels of traffic that will cause undue congestion on the road network. It is noted that the subdivision will utilize existing street connections that were part of earlier phases of the Kunda Park development that were planned to accommodate traffic from these lands. Further it is noted that the density of the current proposal is less than what was initially contemplated for these lands. There are two ingress and egress which will ultimately convey traffic to Merritt Road or Pelham Street. Merritt Road is planned for urbanization in the future and Pelham Street is currently being reconstructed. Pelham Street is classified as an arterial road and Merritt Road as a collector road. Both road classifications accommodate higher levels of traffic. John, Stella and Vera Streets are planned for urbanization in the 10 year Capital Plan with design proposed to occur in 2025 and construction in 2029. Town Public Works staff have reviewed the applications and have indicated they have no concerns with respect to traffic safety or congestion as a result of the development.

Roads within the subdivision will have sidewalks on both sides to provide for pedestrian safety. While Block 83 (wetland crossing) will be narrower than the typical roadway block on paper, at 16 metres wide vs. 20 metres, the driving surface and sidewalks will be consistent with the remainder of the built roadway with smaller boulevards. The crossing will be designed to accommodate all types of vehicles. It should be noted that Block 83 is narrower to minimize impact to the wetland (Class EA approval).

A resident expressed concerns about allowing on-street parking in the subdivision. On-street parking is generally permitted on one side of a local street except during winter snow clearing. On-street parking has the effect of slowing down traffic which is desirable. It also accommodates occasional overflow of parking from driveways for visitors. The future roads will be designed to accommodate some on-street parking.

Safety and Disruption during Construction Process

Many residents were concerned about safety of pedestrians (including students travelling to Glynn A. Green Elementary School) and road users during construction as well as noise impacts to existing residents. It is planned that construction vehicles will access the site from Merritt Road and Kunda Park Boulevard at this time. Unfortunately, it will not be possible to access the site without traveling through the existing neighbourhood. There will be no road crossings of the Steve Bauer Trail and the lands owned by the developer along Port Robinson Road are outside of the subdivision plan and contain the archaeological resources that are to remain protected at this time.

Planning staff have included a recommended condition (Appendix B) requiring a construction management plan with consideration given to minimizing traffic, road, dust, and noise impacts to the satisfaction of the Director of Public Works to mitigate concerns and ensure that there is clear communication with all construction contractors.

Any damage that occurs to Town roads or infrastructure from the development or construction will be the responsibility of the developer. Clauses will be included in a future subdivision agreement outlining this requirement.

The construction management plan will also be required to address and minimize closures or disruption to the Steve Bauer Trail.

Lack of Road Access to Port Robinson Road / Clarity around Use of Lands Outside Subdivision

As noted earlier in this report, the lands which are owned by the developer and part of the subject property outside of the subdivision plan contain archaeological resources. As a result, no road connection is proposed in this location. The land is planned to remain in the developer's ownership and be left in their current state so as not to disturb the archaeological resources. There is no plan to develop these lands at this time. A street connection at this location is also not desirable as it would not comply with the separation requirements with the Station and Port Robinson Road intersection and create safety concerns.

Naturalized Channel Design

Recommended conditions of draft plan approval will require fencing along the naturalized channel with no gates. Detailed design for the channel will take place as a condition of draft plan approval. This will include preparation of an Erosion and Sediment Control Plan and Planting Plan. These items will be reviewed by the Town, Niagara Region, and Niagara Peninsula Conservation Authority prior to final clearance

of the subdivision. Naturalized channel design is a best practice and will be part of the design requirements.

Impact to Existing Residential Properties due to Residential Two zoning

Generally, residential use is compatible with residential use. In this case, it is proposed new single detached residential uses adjacent to existing single detached residential use. No land use conflicts are anticipated from the proposed development on the existing land uses. The requested site-specific Residential Two zoning will permit single detached dwellings and require a minimum rear yard of 7.5 metres. The side yard setbacks requested are generally consistent with current residential development and allow space for swales and catchbasins as needed. The lot grading and stormwater management details will be determined as part of the detailed engineering design that takes place as a condition of draft plan approval. The requested height permission (10.5 metres) is consistent with the height permitted for the dwellings on John and Stella Streets. Adverse impacts to existing residential properties are not anticipated as a result of the requested zoning. While the lots sizes are smaller than the existing lot sizes on John and Stella Streets, they will exceed the minimum lot area required in the Residential Two zone and are considered large lots by today's standard. Current Provincial, Regional, and local policies require more efficient use of land.

To ensure that privacy of existing residents is maintained, Planning staff have recommended a condition for privacy fencing where abutting existing residential uses.

Potential Costs to Residents

As noted, the subdivision agreement will require that any damage that occurs to Town roads or infrastructure during construction will be the responsibility of the developer. Should upgrades to existing infrastructure be required to accommodate the development, that would also be the responsibility of the developer. At this time, upgrades are not anticipated.

Tree and Wetland Protection

Blocks 79 and 80 will be rezoned to an environmental protection zone. These areas represent the wetland and a 15 metre buffer. The naturalized channel (Block 81) will also be zoned to an environmental protection zone with periodic maintenance permitted as needed. The Niagara Peninsula Conservation Authority and Niagara Region have included conditions that will require a planting plan and fencing of these areas for long-term enhancement and protection.

Connectivity of the wetland under the road crossing (Block 83) will be ensured through the class environmental assessment approval which requires a permit from

the Niagara Peninsula Conservation Authority. The width of the crossing has been reduced to 16 metres (from 20 metres) to minimize disruption to the wetland. Further, the extension of John Street shown on previous versions of the draft plan of subdivision was eliminated for the same reason., again to minimize disruption to the wetland.

Drainage

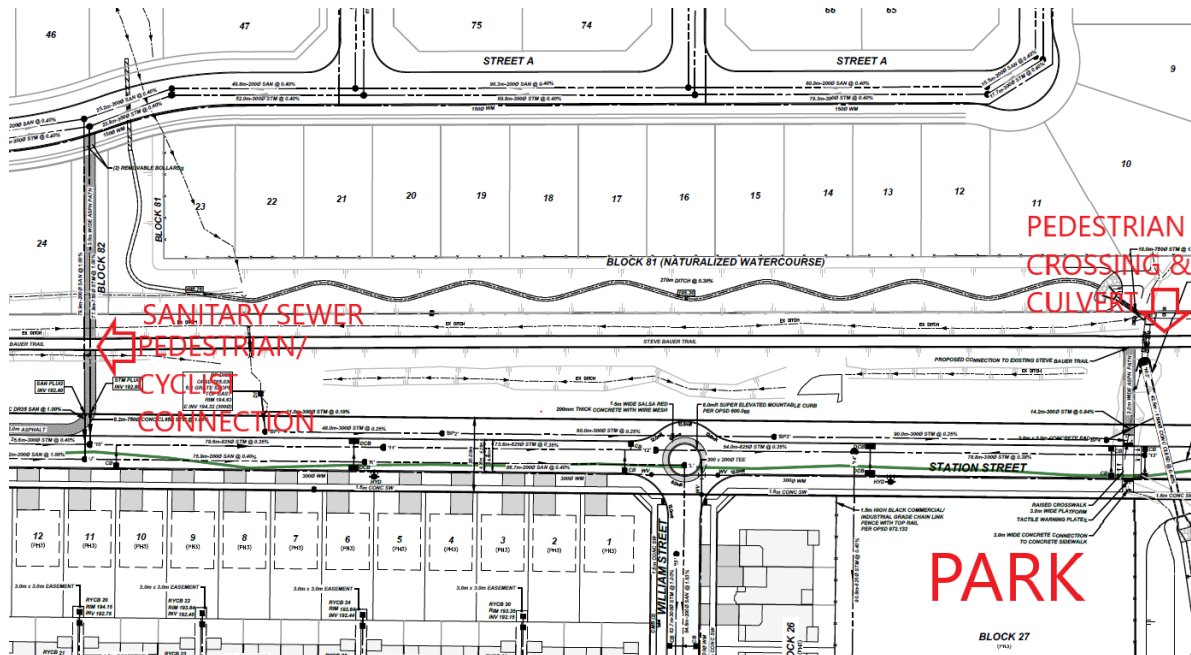
Residents indicated that there are drainage and flooding problems on the properties on the east side of Stella Street. The developer has provided a Stormwater Control Plan which generally indicates where stormwater will be directed. The developer will be required to prepare a subdivision lot grading and drainage plan as part of the detailed engineering design. This plan will be reviewed by Town Public Works staff to ensure no negative impact to adjacent properties.

Residents and Council requested that the developer consider low impact development when completing the detailed engineering design. The developer indicated he would consider this as part of the design process.

Development Connectivity with Trail and Forest Park Subdivision

Town staff have been working with the developer's engineering consultant to ensure that the Kunda Park Phase 4 and Forest Park subdivisions can be integrated from a servicing and active transportation perspective with minimal disruption to the Steve Bauer Trail and associated trees. It is planned that the pedestrian connection (Block 82) in Kunda Park Phase 4 will be aligned with a pedestrian/cyclist connection into Forest Park which is also the location of the sanitary sewer connection. A pedestrian connection will also be provided from the Steve Bauer Trail across the Station Street extension to allow direct access to the park. This is the location where the culvert conveys the stormwater from the naturalized channel in Kunda Park into Forest Park (Figure 3). Further details will be determined as part of the detailed design for both subdivisions.

Figure 3: Planned Active Transportation and Servicing Connections with Forest Park



Some residents expressed concern that the 10 metre width of the proposed pedestrian connection to the Steve Bauer Trail (Block 82) was too wide. This block will also contain the sanitary sewer connection and necessitates the 10 metre width. Design for the pedestrian connection will take place as part of the detailed engineering design. The connection will be only part of the width of the block as shown on the plan. Co-locating the pedestrian connection adjacent to other connections does minimize impact and reduces the overall width required for these connections.

Conclusions

The applicant has satisfactorily addressed concerns and issues raised during the review process over the last number of years. The next step for the applicant, following draft plan of subdivision and zoning approval, will be to complete the necessary work and engineering design to satisfy the conditions of draft plan approval and work towards receiving final approval prior and enter into a subdivision agreement prior to any construction commencing.

Based on the analysis and discussion contained in this report, Planning staff recommend that the draft plan of subdivision and zoning amendment applications be approved as they represent good land use planning, are consistent with applicable Provincial Plans and Policies and conform with and implement the applicable Regional and Town Official Plans.

Alternatives:

Council could choose not to approve the applications for draft plan of subdivision and amendment to the Zoning By-law. However, Council is advised that should they do so, the applicant will likely appeal Council's refusal to the Local Planning Appeal Tribunal which will cause delay and added costs for both the Town and the applicant.

Council could choose to approve the applications subject to modifications.

Attachments:

Appendix A	Draft Plan of Subdivision
Appendix B	Recommended Conditions of Draft Plan Approval
Appendix C	Niagara Peninsula Conservation Authority Comments

Prepared and Recommended by:

Shannon Larocque, MCIP, RPP
Senior Planner

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

Reviewed and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer

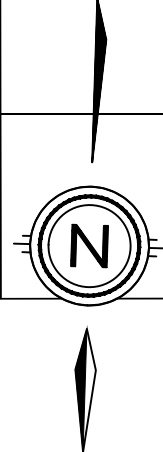
KUNDA PARK
PELHAM

JOHN STREET

STELLA STREET

VERA STREET

STELLA STREET



EXISTING RESIDENTIAL

EXISTING RESIDENTIAL

BEECHWOOD CRESCENT

JOHN STREET

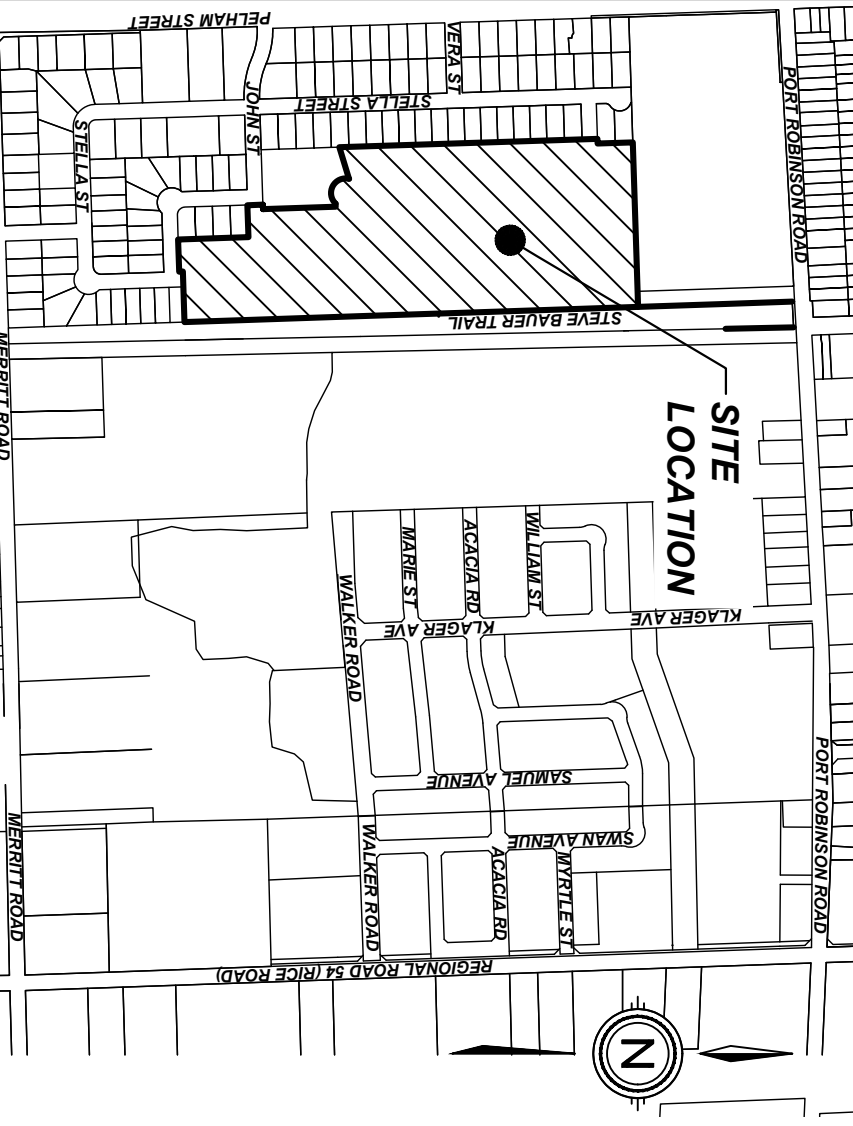
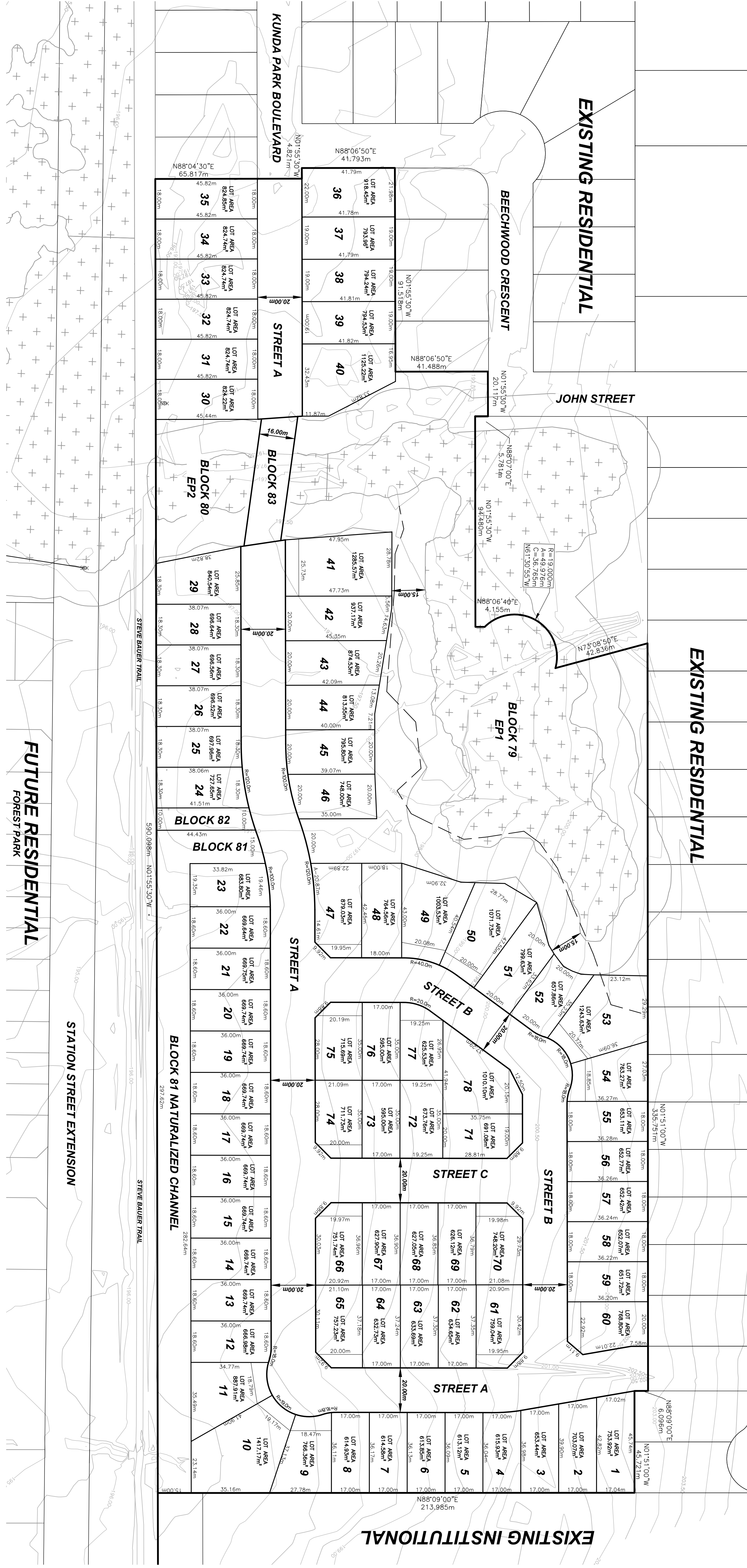
EXISTING INSTITUTIONAL

FUTURE RESIDENTIAL
FOREST PARK

STATION STREET EXTENSION

STEVE BAUER TRAIL

STEVE BAUER TRAIL



KEY PLAN
N.T.S.

DRAFT PLAN OF SUBDIVISION

LEGAL DESCRIPTION

PART OF LOT 173
GEOGRAPHIC TOWNSHIP OF THOROLD
NOW IN THE TOWN OF PELHAM
REGIONAL MUNICIPALITY OF NIAGARA

OWNER'S CERTIFICATE

BEING THE REGISTERED OWNER, I HEREBY
AUTHORIZE UPPER CANADA CONSULTANTS TO
PREPARE AND SUBMIT THIS DRAFT PLAN OF
SUBDIVISION TO THE TOWN OF PELHAM
FOR APPROVAL.

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE BOUNDARIES OF
THE LANDS TO BE SUBDIVIDED ARE
CORRECTLY SHOWN.

W. Blaw & Assoc
KIRKUP-MASCOE-URE SURVEYING LTD.
FEBRUARY 18, 2020
DATE

REQUIREMENTS OF SECTION 51(17)
OF THE PLANNING ACT

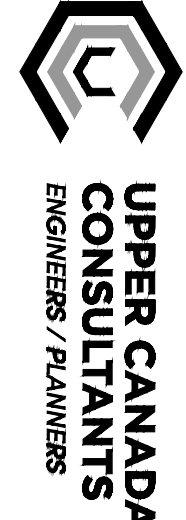
- a) SEE PLAN
- b) SEE PLAN
- c) SEE PLAN
- d) SEE PLAN
- e) SEE PLAN
- f) SEE PLAN
- g) SEE PLAN
- h) MUNICIPAL WATER
- i) SEE PLAN
- j) SILTY SAND
- k) FULL SERVICE

LAND USE SCHEDULE

LAND USE	LOT/BLOCK	# OF UNITS	AREA(ha)	AREA(%)
SINGLE FAMILY RESIDENTIAL	1-78	78	5.312	53.24
ENVIRONMENTAL PROTECTION 1	BLOCK 79		2.298	20.70
ENVIRONMENTAL PROTECTION 2	BLOCK 80		0.263	2.37
NATURALIZED CHANNEL	BLOCK 81		0.494	4.45
10m WIDE WALKWAY	BLOCK 82		0.043	0.39
CLASS EA LANDS	BLOCK 83		0.091	0.82
ROADWAY			2.202	18.03
TOTAL	83		11.104	100.00

DEVELOPABLE AREA = 7.914ha (EXCLUDES BLOCK 79-83)
DEVELOPABLE DENSITY = 9.88 units/ha

#	ISSUED FOR APPROVAL	2022-11-22	TA
REVISION	DATE	INIT	
0			



DRAWING TITLE	DRAFTING	TA
KUNDA PARK DRAFT PLAN OF SUBDIVISION	DATE	NOVEMBER 22, 2022
	PRINTED	NOVEMBER 22, 2022
	SCALE	1:1500
	DWG No.	REV
	1995-DP-KP	0

APPENDIX B

Conditions of Draft Plan Approval Kunda Park Phase 4 Plan of Subdivision (File No. 26T19-020-02)

The conditions of final approval and registration of the Kunda Park Phase 4 Plan of Subdivision by Sterling Realty (Niagara) Inc. (file: 26T19-020-02) in the Town of Pelham are as follows:

DRAFT PLAN

1. This approval applies to the lands known as Kunda Park Phase 4 - Draft Plan of Subdivision, legally described as Part of Lot 173, Geographic Township of Thorold, now in the Town of Pelham, Regional Municipality of Niagara prepared by Upper Canada Consultants Engineers / Planners printed November 22, 2022 depicting:
 - Lots 1 – 78 for single detached dwellings;
 - Blocks 79 and 80 for environmental protection;
 - Block 81 for naturalized channel;
 - Block 82 for 10 metre wide walkway;
 - Block 83 for wetland crossing;
 - 2.002 hectares for public streets.
2. The headings inserted in these draft plan conditions are inserted for convenience only and shall not be used as a means of interpreting these draft plan conditions.

AGREEMENTS AND FINANCIAL REQUIREMENTS

3. The Developer shall provide three (3) paper copies and an electronic copy of the pre-registration plan, prepared by an Ontario Land Surveyor, and a letter to the department of Community Planning & Development stating how all the conditions imposed have been, or are to be fulfilled.
4. The Developer shall provide an electronic copy of the lot priority plan to the satisfaction of the Director of Community Planning & Development.
5. The Developer shall agree to pay to the Town of Pelham all required processing and administration fees.
6. The Developer shall submit a Solicitor's Certificate of Ownership for the Plan of Subdivision of land to the department of Community Planning & Development prior to the preparation of the Subdivision Agreement.
7. That the Subdivision Agreement between the Developer and the Town of Pelham be registered by the Municipality against the lands to which it applies in accordance with the *Planning Act R.S.O. 1990, c. P.13*.

APPENDIX B

8. That the Developer shall pay the applicable Town of Pelham, Niagara Region, and Niagara District Catholic School Board development charges in place at the time of the Building Permit issuance.
9. That the Developer agrees in writing to satisfy all of the requirements, financial and otherwise, of the Town of Pelham concerning the provision of roads, daylight triangles, lot reserves, road widenings, sidewalks, fire hydrants, street lights, the extension and installation of services, stormwater management and drainage including the upgrading of services and the restoration of existing roads damaged during the development of the Plan of Subdivision.
10. That the subdivision, if phased, will be to the satisfaction of the Director of Community Planning & Development and the Director of Public Works.
11. That the Developer shall dedicate land for 0.3 metre reserves to the Town of Pelham, free and clear of any mortgages, liens and encumbrances to the satisfaction of the Director of Public Works.
12. Prior to any site alteration, or final approval, the Developer shall submit all supporting materials, prepared by a qualified professional, as required by the Town or any applicable authority, and shall agree to implement the recommendations of the reports, studies and plans to the satisfaction of the Director of Public Works, Director of Community Planning & Development, and any other applicable authority.
13. That the Developer will not negatively impact trees on neighbouring properties except where authorized.
14. This approval is for a period of three (3) years. Approval may be extended pursuant to Section 51 (33) of the *Planning Act R.S.O. 1990, c. P.13* but no extension can be granted once the approval has lapsed. If the Developer wishes to request an extension to the approval, a written explanation on why the extension is required, together with the resolution from the Region must be submitted for Town Council's consideration, prior to the lapsing date.
15. If final approval is not given to this draft plan within three (3) years of the approval date, and no extensions have been granted, approval will lapse under Section 51 (32) of the *Planning Act R.S.O. 1990, c. P.13*.
16. It is the Developer's responsibility to fulfill the conditions of draft plan approval and to ensure that the required clearance letters are forwarded by the appropriate agencies to the Town, quoting file number **26T19-020-02** and referencing the conditions that are cleared.

LAND TRANSFERS AND EASEMENTS

APPENDIX B

17. That the Developer agrees to deed any and all easements that may be required for access utility and drainage purposes to the appropriate authorities and utilities.
18. The Developer shall indicate in the Agreement, in words satisfactory to Bell Canada, that it will grant to Bell Canada any easements that may be required, which may include a blanket easement, for communication/telecommunication infrastructure. In the event of any conflict with existing Bell Canada facilities or easements, the Owner shall be responsible for the relocation of such facilities or easements.
19. The Developer shall agree that in the event that easement(s) are required to service this development, and any future adjacent developments, the applicant will provide the easement(s) to Enbridge Gas Inc. at no cost.

ZONING

20. That prior to final approval, the Zoning By-law Amendment application (File No. AM-03-2020), which reflects the layout of the draft plan of subdivision, has come into effect in accordance with the provisions of Section 34 and 35.1 (1) of the *Planning Act R.S.O. 1990, c. P.13*.
21. The Developer shall submit to the Department of Community Planning & Development three (3) paper copies and an electronic copy of the proposed draft plan and a letter prepared by an Ontario Land Surveyor to confirm zoning compliance.
22. That the Director of Community Planning & Development be provided with a surveyor's certificate showing lot frontages and net lot area for the final Plan of Subdivision.

ROADS

23. That the Developer shall provide street tree plantings in the boulevards on both sides of all roads at the rate of one tree per dwelling lot frontage, or at 15 metre intervals elsewhere, to the satisfaction of the Director of Community Planning & Development.
24. That the Developer agrees that all streets within the subdivision be conveyed to the Town of Pelham as public highways.
25. That the Developer agrees that the proposed streets be named to the satisfaction of the Town of Pelham.
26. That the Developer provides detailed engineering design drawings for the roads, sidewalks and street lighting facilities required to service the subject lands to the Director of Public Works for review and approval.

APPENDIX B

27. The Developer shall be responsible for the construction of all primary and secondary services, including sidewalks, boulevard plantings and sodding/hydroseeding.
28. That the Developer agrees to provide decorative street lighting to the satisfaction of the Director of Public Works.
29. That the Developer agrees to provide a detailed streetscape plan to the satisfaction of the Director of Community Planning and Development and the Director of Public Works illustrating street trees, on-street parking and driveway entrances.
30. That the Developer agrees to install sidewalk and grade and sod boulevards. All sidewalks shall be deemed to be Secondary Services and shall be completed within six (6) months of occupancy of each dwelling, except between November 15th and April 15th at which time the sidewalks must be installed as soon as possible, at the locations shown on the Plans and in accordance with the approved Subdivision Grade Control Plan or as amended by the Director of Public Works. The sidewalks are to be constructed in their entirety in block long sections.
31. That the Developer agrees to provide curb side parking to the satisfaction of the Director of Public Works.
32. That prior to any construction taking place within the public road allowance, the Developer shall obtain a Temporary Works Permit. Applications must be made through the Department of Public Works.
33. The Developer shall provide a construction management plan with consideration given to minimizing traffic, road, dust and noise impacts to the satisfaction of the Director of Public Works.

MUNICIPAL SERVICES

34. That a Functional Servicing Study report indicating that the accepting servicing infrastructure (storm sewers, sanitary sewers, and water mains) can accommodate the additional flows and that adequate fire flows are provided to the development, be submitted to the Town of Pelham for review and to the satisfaction of the Director of Public Works and Fire Chief.
35. That the Developer will provide the Town of Pelham with the proposed site servicing plans for the subject property. The Director of Public Works shall approve the plans prior to final approval of the subdivision.
36. That the design of the proposed storm sewer be to the satisfaction of the Director of Public Works.

APPENDIX B

37. That the Developer submit to the Town of Pelham for review and approval, a Geotechnical Study, prepared by a qualified engineer, that verifies the soil bearing capacity, recommends appropriate sewer pipe design, pipe bedding, backfill and roadway designs, to the satisfaction of the Director of Public Works.
38. That the design of all municipal and public utility services for the Subdivision be coordinated with adjacent development.
39. That the design drawings for the sanitary sewer and stormwater drainage systems to service this development be submitted to the Regional Public Works Department for review and approval. (Note: Any stormwater management facility that may be proposed for this development would require the direct approval of the Ministry of the Environment, Toronto). The Town of Pelham is responsible for the review and approval of watermains under the MOE Water License Program.
40. That prior to registration of this plan, the Developer must obtain Environmental Compliance Approval from the Ministry of Environment, Conservation and Parks for sewer and storm water management works needed to service the proposed development. Prior to installing the watermain to service the proposed development, the Developer must submit Ministry of Environment, Conservation and Parks 'Form 1' Record of Watermain.
41. At the end of the project, the design engineer shall certify that all grading, storm sewers, and stormwater management controls have been constructed in general conformity to the approved drawings. Copies of the certification shall be circulated to the Town of Pelham and the Regional Municipality of Niagara.
42. That all sub-grade building foundation's drainage be directed to a sump pump(s) in each house discharging via storm laterals to the municipal storm sewer system. Foundation drains are prohibited from connecting to the sanitary sewer system.
43. Roof water drainage from any structure or building shall discharge onto splash pads (concrete or other suitable material) to grass surfaces via downspouts. These splash pads shall extend a distance at least 1.2 metres away from the structure and must direct the flow away from the building, not onto walks or driveways, and not towards adjacent property.

STORMWATER MANAGEMENT, GRADING, SEDIMENT AND EROSION CONTROL

44. That the subdivision agreement contains provisions whereby the Developer agrees to implement the approved Stormwater Management Plan required and in accordance with Condition 39.

APPENDIX B

45. That the Developer prepare a detailed subdivision grade control plan showing both existing and proposed grades and the means whereby major storm flows will be accommodated across the site to be submitted to the Town of Pelham and Regional Municipality of Niagara Development Services Division for review and approval.
46. That prior to approval of the final plan or any on-site grading, the Developer submit to the Town of Pelham for review and approval, two copies of a detailed Stormwater Management Plan for the subdivision and the following plans designed and sealed by a suitably qualified professional engineer in accordance with the Ministry of the Environment documents entitled "Stormwater Management Planning and Design Manual (March 2003)" and "Stormwater Quality Guidelines for New Development (May 1991)", and in accordance with the Town of Pelham's Lot Grading and Drainage Policy, and the Town of Pelham's Stormwater Management Facility Standards:
- a) Detailed lot grading and drainage plans, noting both existing and proposed grades and the means whereby overland flows will be accommodated across the site; and,
 - b) Detailed sediment and erosion control plans.
47. That detailed lot grading and drainage plans, noting both existing and proposed grades and the means whereby overland flows will be accommodated across the site, be submitted to the Region of Niagara for review and approval.
48. That prior to approval of the final plan, the Developer submit to the Town of Pelham a detailed Stormwater Management Plan for the development completed by a qualified engineer and prepared in accordance with the "MOEE Stormwater Management Practices, Planning and Design Manual (June 1994)".

FENCING

49. That the Developer shall provide privacy fencing where abutting existing residential uses along Stella Street and Beechwood Crescent in compliance with the Town of Pelham Fence By-law.

UTILITIES

50. The Developer shall coordinate the preparation of an overall utility distribution plan to the satisfaction of all affected authorities.
51. The Developer shall enter into any agreement as required by utility companies for installation of services, including street lighting, all in accordance with the standards of the Town of Pelham. All utilities servicing the subdivision shall be underground. Upon installation and acceptance by

APPENDIX B

the Town, streetlights and streetlight electrical supply system will be added to the Town's inventory.

CANADA POST

52.The Developer shall include on all offers of purchase and sale, a statement that advises the prospective purchaser that:

- i) the home/business mail delivery will be from a designated Central Mail Box;
- ii) the developer/owners be responsible for officially notifying the purchasers of the exact Centralized Mail Box locations prior to the closing of any home sales.

53.The Developer agrees to:

- i) work with Canada Post to determine and provide temporary suitable Centralized Mail Box locations which may be utilized by Canada Post until the curbs, boulevards and sidewalks are in place in the remainder of the development;
- ii) install a concrete pad in accordance with the requirements of and in locations to be approved by Canada Post to facilitate the placement of Community Mail Boxes;
- iii) identify the pads above on the engineering servicing drawings. Said pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the plan of subdivision;
- iv) determine the location of all centralized mail receiving facilities in co-operation with Canada Post and to indicate the location of the centralized mail facilities on appropriate maps, information boards and plans. Maps are also to be prominently displayed in the sales office(s) showing specific Centralized Mail Facility locations.

DISTRICT SCHOOL BOARD OF NIAGARA

54.That the developer constructs, at his/her cost, a 6-foot high chain link fence with small web (1.25" x 1.25") along the northern limit of the subdivision (lots 1 to 10) that directly abuts the school site.

55.That the developer contacts Terry Deguire, Manager of Facility Services – Plant General Administration, prior to constructing the fence to make the necessary arrangements to complete the fence works.

56.That a clause be included within the subdivision agreement, to be registered on titles, that advises the future property owners that, provided the District School Board of Niagara owns the school property to the north, the owner is responsible for ensuring the 6-foot high fence is maintained, shall not remove the fence or any part of the fence, and shall not add any gates or openings that would allow access directly to the school property.

APPENDIX B

57. That sidewalks be constructed within the subdivision to facilitate student travel to the school/bus stop locations.

NIAGARA PENINSULA CONSERVATION AUTHORITY

58. That Blocks 79 and 80 be rezoned to Environmental Protection, or equivalent, to the satisfaction of the Niagara Peninsula Conservation Authority.

59. That the Developer submit to the Niagara Peninsula Conservation Authority for review and approval, detailed grading and construction sediment and erosion control plans.

60. That limit of work fencing be shown on the grading plan along all portions of the 15 metre wetland buffer and that no grading occur beyond this point, to the satisfaction of the Niagara Peninsula Conservation Authority. Limit of work fencing must be maintained during the development process and all silt fencing shall be removed once work is completed and all exposed soils are re-vegetated or otherwise stabilized.

61. That the Developer provide 1.5 metre high chain link fencing along any residential lot line abutting the natural areas within Blocks 79, 80 and 81, to the satisfaction of the Niagara Peninsula Conservation Authority. This shall be shown on the Grading Plan.

62. That the Developer submit a Buffer Enhancement/Planting Plan which provides enhancements to the wetland buffer areas to the satisfaction of the NPCA.

63. That the Developer obtain a Work Permit from the Niagara Peninsula Conservation Authority prior to the proposed wetland buffer enhancement work. In support of the Work Permit application, the following information will be required:

- a. A planting plan providing details about species, planting densities and locations.
- b. Any other information as may be determined at the time a Work Permit application is submitted to the Niagara Peninsula Conservation Authority.

64. That the Developer obtain a Work Permit from the Niagara Peninsula Conservation Authority prior to the proposed watercourse removal and new natural watercourse construction. In support of the Work Permit application, the following information will be required:

- a. Design drawings for the new watercourse.
- b. Planting plan for the riparian corridor.
- c. Any other information as may be determined at the time a Work Permit application is submitted to the Niagara Peninsula Conservation Authority.

APPENDIX B

65. That the Developer obtain a Work Permit from the Niagara Peninsula Conservation Authority prior to the removal of the wetland for Block 83 and recreation of the wetlands. In support of the Work Permit application, the following information will be required:
- a. A detailed compensation plan that indicates the design of the proposed wetland, construction methodology, material details, etc. (the Developer is to scope this requirement with NPCA staff prior to submitting a Work Permit application);
 - b. A detailed monitoring plan; and
 - c. Any other information as may be determined at the time a Work Permit application is submitted to the NPCA.
66. That the Developer obtain Work Permits from the NPCA for all other works located within NPCA's regulated areas and buffers (including but not limited to any stormwater outfalls, any works proposed within the regulated buffers).
67. That Conditions 60 to 69 above be incorporated into the Subdivision Agreement between the Developer and the Town of Pelham, to the satisfaction of the Niagara Peninsula Conservation Authority. The Town of Pelham shall circulate the draft Subdivision Agreement to the Niagara Peninsula Conservation Authority for its review and approval.

NIAGARA REGION PLANNING & DEVELOPMENT SERVICES

68. That the following clause be included in the subdivision agreement:
- "Should deeply buried archaeological remains/resources be found on the property during construction activities, all activities impacting archaeological resources must cease immediately, notify the Archaeology Programs Unit of the Ministry of Heritage, Sport, Tourism and Culture Industries (416-212-8886) and a licensed archaeologist is required to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists.
- In the event that human remains are encountered during construction, all activities must cease immediately and the local police as well as the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, MHSTCI should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act."
69. That the draft plan agreement contain wording wherein the owner agrees to implement the mitigation measures and recommendations found in Section 4.2 of the EIS Addendum (prepared by Beacon Environmental, dated September 2022), including but not limited to:
- a) To the extent possible, all proposed outdoor lighting be downward facing and shielded to prevent light spillage into the surrounding natural area.

APPENDIX B

- b) That the Environmental Protection Block boundary be identified in the field with visible construction fencing prior to the commencement of any site alteration and that no machinery, equipment, or materials be stored or allowed to enter this area, to the satisfaction of Niagara Region.
- c) No construction materials or equipment is to be located, even on a temporary basis, within the buffers of the PSW and Significant Woodland.
- d) That the storage and handling of materials associated with material and chemical and refueling of heavy machinery follow OPSS 180. Additionally, specific refueling areas should be identified that are no closer than 30 m from any watercourse.
- e) Any required vegetation removals should be conducted in a manner to avoid impacts to nesting birds that may be utilizing habitats on the property. The breeding bird period for this area is generally March 15 to August 31. Additionally, site clearing should not be undertaken one week before June 1st through to 1 week after June 30th to avoid impacts to bats potentially breeding in the woodland.

- 70. That permanent rear-lot fencing be provided adjacent to the natural heritage features and along the watercourse/channel corridor adjacent to the Steve Bauer Trail, to the satisfaction of the Niagara Region. A no-gate bylaw is recommended to reduce human encroachment and limit the movement of pets into the adjacent natural areas.
- 71. That an Erosion and Sediment Control (ESC) Plan be prepared for review and approval by the Niagara Region. All ESC measures shall be maintained in good condition for the duration of construction until all disturbed surfaces have been stabilized. Muddy water shall not be allowed to leave the site.
- 72. That a Grading Plan be provided to the satisfaction of Niagara Region, that demonstrates that existing overland flow patterns are maintained and that no grading within the PSW, Significant Woodland and/or their buffers will occur.
- 73. That a Tree Preservation Plan (TPP) be submitted to the Niagara Region for review and approval. The TPP shall be prepared by a qualified professional, preferably by a Certified Arborist or qualified member of the Ontario Professional Foresters Association, in accordance with the Region's Woodland Conservation By-law.
- 74. That a Restoration and Enhancement Plan be prepared to the satisfaction of the Niagara Region. The plan should incorporate the recommendations of Beacon Environmental. The Plan shall identify the location of dense plantings of native trees and shrubs that complement the adjacent vegetation communities. The removal of invasive species shall also be incorporated. The Plan shall include the full extent of the PSW, Significant Woodland and associated buffers, as well as the watercourse block adjacent to the Steve Bauer Trail. Updates to the Restoration and Enhancement Plan shall be required based on findings of the Ecological Monitoring Plan.

APPENDIX B

75. That the developer provide securities to the Town of Pelham in the form of a Letter of Credit in the amount of the estimated cost as approved by the Region for the restorative plantings required in accordance with the above conditions and that the subdivision agreement include provisions whereby the developer agrees that the Town may draw on the Letter of Credit, if required, to ensure installation of the plantings.
76. That an Ecological Monitoring Plan be prepared to the satisfaction of Niagara Region. At a minimum the plan should assess the effectiveness and success of the restorative plantings and invasive species removals, information gathered shall be used to adapt the restoration strategy as appropriate. The Report should be addressed to Adam Boudens, Senior Environmental Planner, developmentplanningapplications@niagararegion.ca by September 1st of years 1 through 5. The Report should also include photographs and advise actions necessary to address any deficiencies.

Note. Monitoring should take place upon the initiation of any development and/or site alteration and continue up to and including 5 years from full build out.

77. That the Subdivision agreement contain wording wherein the owner agrees to implement the approved Erosion and Sediment Control Plan, Grading Plan, Tree Preservation Plan, Restoration and Enhancement Plan, and Ecological Monitoring Plan.
78. That the owner submit a written undertaking to the Niagara Region Planning and Development Services Department that draft approval of this subdivision does not include a commitment of servicing allocation by the Regional Municipality of Niagara as this servicing allocation will be assigned at the time of registration and any pre-servicing will be at the sole risk and responsibility of the owner.
79. That the owner submit a written undertaking to the Niagara Region Planning and Development Services Department that all offers and agreements of Purchase and Sale, which may be negotiated prior to registration of this subdivision, shall contain a clause indicating that a servicing allocation for this subdivision will not be assigned until the plan is registered, and a similar clause be inserted in the subdivision agreement between the owner and the Town.
80. That prior to final approval for registration of this plan of subdivision, the owner shall submit the design drawings [with calculations] for the sanitary and storm drainage systems required to service this development and obtain Ministry of the Environment, Conservation and Parks, Compliance Approval under the Transfer of Review Program or the pending Consolidated Linear Environmental Compliance Approval.

APPENDIX B

81. That prior to approval of the final plan or any on-site grading, the owner shall submit a detailed stormwater management plan for the subdivision and the following plans designed and sealed by a qualified professional engineer in accordance with the Ministry of the Environment, Conservation and Parks documents entitled Stormwater Management Planning and Design Manual, March 2003 and Stormwater Quality Guidelines for New Development, May 1991, or their successors to the Niagara Region Planning and Development Services Department for review and approval:
- i. Detailed lot grading, servicing and drainage plans, noting both existing and proposed grades and the means whereby overland flows will be accommodated across the site;
 - ii. Detailed erosion and sedimentation control plans;
 - iii. Detailed phasing of construction of the stormwater management facility to coincide with phasing of development of residential lands (internal and external to the subdivision) planned to be serviced by the stormwater management facility; and,
 - iv. That prior to final approval for registration of this plan of subdivision, the owner shall submit the design drawings [with calculations] for the stormwater management facility required to service this development and obtain the necessary Ministry of the Environment Compliance Approval.
82. That the subdivision agreement between the owner and the Town contain provisions whereby the owner agrees to implement the approved plan(s) required in accordance with the condition above.
83. That the owner ensure that all streets and development blocks can provide an access in accordance with the Regional Municipality of Niagara policy and by-laws relating to the curb side collection of waste and recycling throughout all phases of development. If developed in phases, where a through street is not maintained, the owner shall provide a revised draft plan to reflect a proposed temporary turnaround/cul-de-sac with a minimum curb radius of 12.8 metres.

Notes:

- Prior to granting final plan approval, the Town must be in receipt of written confirmation that the requirements of each condition have been met and all fees have been paid to the satisfaction of the Niagara Region.
- Prior to final approval for registration, a copy of the draft subdivision agreement for the proposed development should be submitted to the Niagara Region for verification that the appropriate clause pertaining to these conditions have been included. A copy of the executed agreement shall also be provided prior to registration.
- In order to request clearance of the above noted Regional conditions, a letter outlining how the conditions have been satisfied, together with all studies and reports (one hard copy and a PDF digital copy), the applicable review fee, and the draft subdivision agreement shall be

APPENDIX B

submitted to the Niagara Region by the applicant as one complete package, or circulated to the Niagara Region by the Town of Pelham.

Clearance of Conditions

FINAL APPROVAL

1. Subject to the conditions set forth herein, this Draft Plan is approved under Section 51 (31) of the *Planning Act R.S.O. 1990, c. P.13*. Final approval shall be granted by the Town.

CLEARANCE OF CONDITIONS

Prior to granting final plan approval, the Department of Community Planning & Development requires written notice from applicable Town Departments and the following agencies indicating that their respective conditions have been satisfied:

- Bell Canada – Condition 18
- Enbridge Gas – Condition 19
- Canada Post – Conditions 52-53
- District School Board of Niagara – Conditions 54-57
- Niagara Peninsula Conservation Authority – Conditions 58-67
- Niagara Region Planning & Development Services – Conditions 68-83
- Town of Pelham
 - Public Works – Conditions 10-12, 26-48, 50-51
 - Fire & By-law Services – Condition 34
 - Unless otherwise specified, all other conditions shall be to the satisfaction of the Community Planning & Development



250 Thorold Rd 3rd Floor, Welland, ON L3C 3W2
info@npca.ca | npca.ca

March 9, 2023

Via Email Only

Shannon Larocque
Senior Planner
Town of Pelham
20 Pelham Town Square, P.O. Box 400
Fonthill, ON L0S1E0

Dear Ms. Larocque:

Re: NPCA Comments
Application: 2nd Submission – Kunda Park Phase 4
Draft Plan of Subdivision and Zoning By-law Amendment Applications
File No. AM-03-2020 and 26T19-02002
Town of Pelham

The NPCA has received a revised application for Draft Plan of Subdivision for Phase 4 of the Kunda Park Subdivision and associated Zoning By-Law Amendment applications. In support of the application, the NPCA also received an Environmental Impact Study Addendum (EIS), prepared by Beacon Environmental, dated September 2022. This revised submission of the Draft Plan of Subdivision (dated November 22, 2022) proposes the creation of 78 lots for single detached dwellings, Block 82, which is for a pedestrian walkway, Blocks 79 and 80 for environmental features, Block 81 for a naturalized channel (watercourse), and with associated roads. Block 83 is part of the proposed road network that crosses through the existing Provincially Significant Wetland located on these lands.

NPCA Policies

The NPCA regulates watercourses, flood plains (up to the 100 year flood level), Great Lakes shorelines, hazardous land, valleylands, and wetlands under *Ontario Regulation 155/06 of the Conservation Authorities Act*. The NPCA's *Policies, Procedures and Guidelines for the Administration of Ontario Regulation 155/06 and Land Use Planning Policy Document* (NPCA policies) provides direction for managing NPCA regulated features. As this proposal is a re-submission of a previous Draft Plan of Subdivision that was originally made in 2019, and it has been shown that the Applicant has been actively working towards approvals for this development, the NPCA policies at the time of the original application continue to apply to this re-submission. The NPCA regulated features on these lands include three watercourses and the Niagara Street Cataract Road Woodlot Wetland Complex, which is a PSW.

The current Draft Plan proposes a 15-metre buffer to all new proposed building lot lines. This buffer has been previously approved by the NPCA. This position remains unchanged. Appropriate mitigation, including fencing at rear lot lines to minimize further encroachment, and buffer enhancements are recommended to ensure protection to the wetland over the long term. A detailed grading plan and buffer planting plan will be required. Note that implementation of the buffer planting plan will require an NPCA Work Permit.

The PSW and buffer (Blocks 79 and 80) is proposed to be rezoned to an appropriate zone category which recognizes the environmentally sensitive nature of these lands. NPCA staff have no objection to this as it provides the appropriate level of protection for the wetland and its buffer.

The current Draft Plan proposes the extension of Street A through a portion of the identified PSW. The applicant undertook a Municipal Class Environmental Assessment (Class B) to accommodate this crossing. This approval imposed a condition on the project that the applicant work with the NPCA to ensure impacts to the PSW are mitigated. NPCA Policies allow for public infrastructure in a PSW where it has undergone an Environmental Assessment (Policy 8.2.4). Therefore, NPCA staff have no objection in principle to the road going through the PSW subject to the applicant working with the NPCA on an appropriate wetland recreation plan. At this time, appropriate areas for compensation have yet to be detailed and approved by the NPCA. It does appear that there are options and lands available within this Draft Plan to ensure the created wetland and required buffer can be accommodated. However, it needs to be understood that until these details are reviewed and approved by the NPCA, further, minor revisions to the existing lot fabric proposed may be required to accommodate the proposed wetland creation and required buffer.

The NPCA will require that the extent of wetland area impacted by the road design and construction be accurately characterized and appropriately compensated through a compensation and restoration plan for all disturbed areas. Additionally, details regarding the type of crossing and the alignment of the culvert will be needed and any alterations to the existing wetland as well as the creation of wetland should be addressed through an NPCA Work Permit. Again, the approval of an appropriate compensation/restoration plan may result in revisions needed to the existing lot fabric proposed.

The draft plan proposes the current flows of the two more northerly watercourses will be collected and conveyed (untreated) northward through a constructed swale along the rear of lots 43 to 46, then piped eastward under Street A to Block 81 which is a proposed 15m naturalised channel corridor to the west of the Steve Bauer Trail. This watercourse will outlet into a culvert under the Trail and be conveyed into the recently constructed 30m wide naturalized channel within the approved Forest Park and Saffron Meadow Subdivisions. NPCA staff have no objection to this. An NPCA Work Permit will be required for removal of the existing watercourses and establishing the new watercourse using natural channel design principles.

Given the above, NPCA staff consider the applications to conform to the NPCA's Policies subject to the below Conditions of Draft Approval.

Conditions of Draft Plan Approval

The NPCA requests that the following conditions be incorporated into the Conditions of Draft Plan Approval:

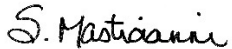
1. That Blocks 79 and 80 be rezoned to Environmental Protection, or equivalent, to the satisfaction of the Niagara Peninsula Conservation Authority.
2. That the Developer submit to the Niagara Peninsula Conservation Authority for review and approval, detailed grading and construction sediment and erosion control plans.

3. That limit of work fencing be shown on the grading plan along all portions of the 15 metre wetland buffer and that no grading occur beyond this point, to the satisfaction of the Niagara Peninsula Conservation Authority. Limit of work fencing must be maintained during the development process and all silt fencing shall be removed once work is completed and all exposed soils are re-vegetated or otherwise stabilized.
4. That the Developer provide 1.5 metre high chain link fencing along any residential lot line abutting the natural areas within Blocks 79, 80 and 81, to the satisfaction of the Niagara Peninsula Conservation Authority. This shall be shown on the Grading Plan.
5. That the Developer submit a Buffer Enhancement/Planting Plan which provides enhancements to the wetland buffer areas to the satisfaction of the NPCA.
6. That the Developer obtain a Work Permit from the Niagara Peninsula Conservation Authority prior to the proposed wetland buffer enhancement work. In support of the Work Permit application, the following information will be required:
 - a. A planting plan providing details about species, planting densities and locations.
 - b. Any other information as may be determined at the time a Work Permit application is submitted to the Niagara Peninsula Conservation Authority.
7. That the Developer obtain a Work Permit from the Niagara Peninsula Conservation Authority prior to the proposed watercourse removal and new natural watercourse construction. In support of the Work Permit application, the following information will be required:
 - a. Design drawings for the new watercourse.
 - b. Planting plan for the riparian corridor.
 - c. Any other information as may be determined at the time a Work Permit application is submitted to the Niagara Peninsula Conservation Authority.
8. That the Developer obtain a Work Permit from the Niagara Peninsula Conservation Authority prior to the removal of the wetland for Block 83 and recreation of the wetlands. In support of the Work Permit application, the following information will be required:
 - a. A detailed compensation plan that indicates the design of the proposed wetland, construction methodology, material details, etc. (the Developer is to scope this requirement with NPCA staff prior to submitting a Work Permit application);
 - b. A detailed monitoring plan; and
 - c. Any other information as may be determined at the time a Work Permit application is submitted to the NPCA.
9. That the Developer obtain Work Permits from the NPCA for all other works located within NPCA's regulated areas and buffers (including but not limited to any stormwater outfalls, any works proposed within the regulated buffers).
10. That Conditions 1 to 9 above be incorporated into the Subdivision Agreement between the Developer and the Town of Pelham, to the satisfaction of the Niagara Peninsula Conservation Authority. The Town of Pelham shall circulate the draft Subdivision Agreement to the Niagara Peninsula Conservation Authority for its review and approval.

Conclusion

At this time, NPCA staff have no objection to the applications subject to the above Conditions. I hope this information is helpful. Please send a copy of any staff reports to Committee/Council once they are available. If you have any questions, please let me know.

Regards,



Sarah Mastroianni
Manager, Planning and Permits
NPCA

Subject: Quaker Road Reconstruction Project Update**Recommendation:**

BE IT RESOLVED THAT Council receive Report #2023-0083-Public Works – Quaker Road Reconstruction Project Update and Pelham St Phase 4 Project, for information;

AND THAT Council approve the deferral of the following projects to 2024: RD 13-23 Quaker Rd Reconstruction (\$2,100,000); WTR 01-23 Quaker Rd-Watermain (\$800,000) and WST 06-23 Quaker Rd-Wastewater (\$1,050,000) as summarized on Appendix 1;

AND THAT Council approve in 2023 the Pelham Street Phase 4 Reconstruction Road Project # 300649 for \$3,436,000 and Pelham St Phase 4 Watermain Project # 700286 for \$685,000, to be funded as follows: \$595,000 Roads Reserve, \$644,000 by the Water Reserve, \$41,000 by the Wastewater Reserve, \$791,000 by Ontario Community Infrastructure Fund (OCIF), \$1,200,000 ICIP Northern and Rural Grant and \$850,000 by Development Charges Revenue as summarized on Appendix 1;

AND THAT Council approve the change in funding for RD 09-23 Road Rehabilitation project # 300643 in 2023 from \$163,171 Roads Reserve and \$836,829 OCIF grant to \$630,171 Roads Reserve, \$324,000 from the Canada Community Benefit Fund (CCBF) and \$45,829 OCIF as summarized on Appendix 1.

Background:

On February 7, 2022, Council authorized the execution of a cost sharing agreement between the Region of Niagara (Region) and the Town of Pelham (Town) with respect to the Quaker Road Reconstruction Project between Pelham Street and Line Avenue. The purpose of the project is for the Region to construct a new trunk sanitary sewer from Pelham Street to Rice Road that will alleviate the existing capacity issues of the Pelham Street sanitary sewer, and support future flows associated with the growth of Pelham.

As part of the project, Quaker Road from Pelham Street to Line Avenue is to be fully urbanized, complete with a new storm sewer, curb and gutter, sidewalk, and replace the existing watermain and sanitary sewer. The design for the project was to be complete by the end of 2022, with tendering and the start of construction taking place in 2023. Council approved funding for the construction portion of the project as part of the 2023 Capital Budget.

Given the size and complexity of the Region's project, the project is estimated to take 240 working days to complete, which would result in the construction portion of the project finishing by the end of 2024. The construction was to be phased so that all work in Pelham was to be completed by the end of 2023, allowing the Town to proceed with Phase 4 of the Pelham Street Reconstruction project in 2024, which goes from the south Spruceside Crescent intersection to the Pelham/Welland border, approximately 500m south of Quaker Road.

On March 16, 2023, Town staff were approached by Region staff to discuss altering the construction phasing so that the project would start at Rice Road, and proceed west to Pelham Street. The design engineer for the project identified a constructability issue between the proposed trunk sanitary sewer and the Town's existing sanitary sewer that services Quaker Road. The Town's sanitary sewer that services Quaker Road would be cut off as it is in the way of the proposed trunk sanitary sewer and the new local sanitary sewer cannot be constructed as it would not have a proper outlet. Starting the project at Rice Road would allow the trunk sanitary sewer to be constructed up to the intersection of Pelham Street, at which point the new local sanitary sewer could then be constructed and connected to the new trunk sanitary sewer, providing it with a proper outlet.

Analysis:

The proposed construction staging provided to the Town on March 23, 2023, would see that the Welland portion of the project be completed in 2023, with the remaining works, including the Pelham portion, be completed in 2024. The Welland portion of the project is estimated to take 130 working days to complete, and the Pelham portion is estimated to take 110 days to complete.

As of March 24, 2023, the tender documents and design drawings for the Quaker Road Reconstruction Project have not been finalized. Given the coordination, finalization of documents, tendering, review, and award, Town staff anticipate that the construction portion of the Quaker Road project will not commence until July 2023 at the earliest. If construction were to start in July there would be approximately a maximum of 120 possible working days remaining in 2023. However, adverse weather conditions and unforeseen constructability issues, such as high groundwater levels, could negatively impact the construction progress. Therefore, there is a risk that some of the Welland portion of the project will need

to be completed in 2024, which would push back the completion date of the Pelham portion, resulting in a late 2024/early 2025 completion date for the Quaker Road project.

Pelham Street Phase 4 from Spruceside Crescent south to 500m south of Quaker Road has been budgeted for construction in 2024, as it has federal grant funding with a mandatory substantial completion date of October 31, 2026. The project consists of road urbanization including catch basins, bike lanes, sidewalks, and curb and gutter, as well as replacement of the existing waterman, and is estimated to take 100 working days to complete.

Due to safety regulations, two separate construction projects cannot share a common border with each other. Therefore, Pelham Street Phase 4 construction cannot take place at the same time as the Pelham portion of the Quaker Road project. If the Region does not start the Pelham portion of the Quaker Road project until 2024, it is highly unlikely that Pelham Street Phase 4 is able to commence in 2024. This would push the Pelham Street Phase 4 start date back until 2025, and risk losing the remaining grant funding in the amount of approximately \$1,200,000.

After discussions with the Region, the design engineer for the Quaker Road project, MTE Consultants Inc. (MTE), and the design engineer for Pelham Street Phase 4, Associated Engineering (AE), Staff strongly believe the best course of action is to proceed with Pelham Street Phase 4 in 2023. The project is ready to be tendered, and construction could commence as early as Mid-May. Pelham Street Phase 4 would be completed before the end of 2023, and well before the Quaker Road project begins the Pelham portion of it. Proceeding with Pelham Street Phase 4 in 2023 would also ensure that the completion requirements for the federal grant funding associated with the project would be met, and the remainder of the grant funding would be received. There would be no risk of losing the grant funding due to the project not being substantially complete by October 31, 2026.

Financial Considerations:

Based on the original construction phasing for the Quaker Road project having the Pelham portion completed in 2023, staff had budgeted for the project in the 2023 Capital Budget that was approved by Council on February 6, 2023. Given that the Pelham portion of the Quaker Road project will not begin until 2024, the Town has no financial commitments to the project until then. The total approved budget for the Quaker Road project is \$3,950,000. The breakdown of the approved budget is as follows: Road (RD 13-23) \$2,100,000, Wastewater (WST 06-23) for \$1,050,000 and Water (WTR 01-23) for \$800,000.

Staff received a cost estimate for Pelham Street Phase 4 on March 23, 2023, based on current industry unit prices. The estimated construction cost for Pelham Street

Phase 4 is \$3,961,000. Also required for the project are contract administration and geotechnical testing, which is estimated to cost \$160,000. Therefore, the total estimated cost of Pelham Street Phase 4 is \$4,121,000. The breakdown of the estimated project cost is as follows:

Road:	\$3,460,000
Wastewater:	\$ 41,000
Water:	\$ 620,000

Appendix 1 has a breakdown of the funding sources for the Pelham St Phase 4 Project. In summary the funding of \$4,121,000 is as follows: \$595,000 Roads Reserve, \$644,000 by the Water Reserve, \$41,000 by the Wastewater Reserve, \$791,000 by Ontario Community Infrastructure Fund (OCIF), \$1,200,000 ICIP Northern and Rural Grant and \$850,000 by Development Charges Revenue.

Staff estimate there to be \$640,000 in savings for the Pelham Stret Phase 3 project (RD 11-22) thanks to value engineering that was done by Town staff, the consulting engineer, and the contractor that will used to fund Pelham Street Phase 4.

The Quaker Road Reconstruction project will be budgeted in the 2024 Capital Budget. The breakdown is on Appendix 1.

In order to fund Pelham St Phase 4 project certain grant funding needed to be reallocated. This has impacted Project RD 09-23 Road Rehabilitation. There is \$324,000 of Canada Community Benefit Fund that is carryforward from 2022 that is being allocated to this project. Please refer to Appendix 1 for the reallocation of funds.

In summary, by deferring the Quaker Road project to 2024 and moving the Pelham St Phase 4 project to 2023 the impact over the two years (as listed on Appendix 1) is as follows:

- Increase to Roads Reserve of \$271,000, decrease to Water Reserve of \$756,000, increase to the Wastewater Reserve of \$41,000, increase to CCBF of \$324,000, decrease ICIP Northern and Rural Grant of \$621,610 and decrease in a new debenture of \$1,881,140, for a total net decrease of \$2,622,750.

Alternatives Reviewed:

An alternative to proceeding with Pelham Street Phase 4 in 2023 is to wait for the Quaker Road project to be complete and proceed with Pelham Street Phase 4 after that. Staff is not in favour of this alternative as there is no guarantee that the Quaker Road project is complete by the end of 2024, which increases the Town's risk of losing \$1,200,000 in grant funding for Pelham Street Phase 4 as the project

may not be complete by the mandatory substantial completion date of October 31, 2026, as outlined in the grant agreement.

Strategic Plan Relationship: Build Strong Communities and Cultural Assets

The Town's infrastructure benefits from the timely replacement of aging infrastructure, and is critical to ensuring the Town maintains a safe and efficient transportation network, water distribution system, wastewater collection system, and stormwater management system.

Consultation:

Consultation was undertaken with the Region of Niagara, MTE Consultants Inc. and Associated Engineering, in preparation for this report.

Other Pertinent Reports/Attachments:

Appendix 1: 2023 Capital Budget Changes for Quaker Rd and Pelham St Phase 4

2022-0035-Public Works – Quaker Road Reconstruction Cost Sharing Agreement with Niagara Region

2021-0192-Public Works – Detailed Design of Quaker Road Reconstruction between Pelham Street and Line Avenue

Prepared and Recommended by:

Lucas Smith, B. Eng., E.I.T.
Engineering Technologist

Jason Marr, P. Eng.
Director of Public Works

Teresa Quinlin-Murphy, FCPA, FCA, MBA
Director Corporate Services and Treasurer

Usama Seraj, CPA, CMA
Manager Finance and Deputy Treasurer

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer

Appendix 1: 2023 Capital Budget Changes for Quaker Rd and Pelham St Phase 4

Current Approved Budget		Expenditure	Funding								
Project	Year	Budget	Reserve - Roads	Reserve - Water	Reserve - Wastewater	Grant - CCBF	Grant - OCIF	Grant Federal	Debenture	DC	Total Funding
RD 13- 23 - 300683 - Quaker Rd Recons	2023	2,100,000	(1,534,000)			(566,000)					(2,100,000)
RD 09-23 - 300643 - Road Rehabilitation	2023	1,000,000	(163,171)				(836,829)				(1,000,000)
RD 12-23 - 300669 Canboro Rd Cycling Iniative	2023	843,750	(438,750)					(405,000)			(843,750)
WTR 01-23- 700272 - Quaker Rd - Watermain	2023	800,000		(800,000)							(800,000)
WST 06-23 - 700357 - Quaker Rd Sanitary	2023	1,050,000			(1,050,000)						(1,050,000)
Total 2023 Approved		5,793,750	(2,135,921)	(800,000)	(1,050,000)	(566,000)	(836,829)	(405,000)	-	-	(5,793,750)
300649 - Pelham St Phase 4	2024	4,500,000						(1,416,610)	(2,233,390)	(850,000)	(4,500,000)
700286 - Pelham St Phase 4 Watermain	2024	1,400,000		(1,400,000)							(1,400,000)
Total 2024 Proposed		5,900,000	-	(1,400,000)	-	-	-	(1,416,610)	(2,233,390)	(850,000)	(5,900,000)
Proposed Amendment		Expenditure	Funding								
Project	Year	Budget	Reserve - Roads	Reserve - Water	Reserve - Wastewater	Grant - CCBF	Grant - OCIF	Grant Federal	Debenture	DC	Total Funding
300649 - Pelham St Phase 4	2023	3,436,000	(595,000)				(791,000)	(1,200,000)		(850,000)	(3,436,000)
700286 - Pelham St Phase 4 Watermain & Wastewater	2023	685,000		(644,000)	(41,000)						(685,000)
RD 09-23 - 300643 - Road Rehabilitation	2023	1,000,000	(630,171)			(324,000)	(45,829)				(1,000,000)
RD 12-23 - 300669 Canboro Rd Cycling Iniative	Cancel	-									-
Total 2023 Proposed		5,121,000	(1,225,171)	(644,000)	(41,000)	(324,000)	(836,829)	(1,200,000)	-	(850,000)	(5,121,000)
RD 13- 23 - 300683 - Quaker Rd Recons	2024	2,100,000	(1,181,750)			(566,000)			(352,250)		(2,100,000)
WTR 700272 - Quaker Rd - Watermain	2024	800,000		(800,000)							(800,000)
WST 06-23 - 700357 - Quaker Rd Sanitary	2024	1,050,000			(1,050,000)						(1,050,000)
Total 2024 Proposed		3,950,000	(1,181,750)	(800,000)	(1,050,000)	(566,000)	-	-	(352,250)	-	(3,950,000)
Summary of Net Changes in Funding			Reserve - Roads	Reserve - Water	Reserve - Wastewater	Grant - CCBF	Grant - OCIF	Grant Federal	Debenture	DC	Total Funding
Increase (Decrease) in Required Funds 2023			(910,750)	(156,000)	(1,009,000)	(242,000)	-	795,000	-	850,000	(672,750)
Increase (Decrease) in Required Funds 2024			1,181,750	(600,000)	1,050,000	566,000	-	(1,416,610)	(1,881,140)	(850,000)	(1,950,000)
Total Increase (Decrease) in Required Funds			271,000	(756,000)	41,000	324,000	-	(621,610)	(1,881,140)	-	(2,622,750)



The Corporation of the Town of Pelham

By-law No. 24-2023

Being a By-law to authorize the execution of a subdivision agreement with Lally Homes Ltd. and the Corporation of the Town of Pelham – Emerald Trail Subdivision.

**Lally Homes Ltd. and the Corporation of the Town of Pelham
File No. 26T19-01-2021**

WHEREAS at the Council meeting held on March 22, 2023, the Municipal Council of the Town of Pelham approved the report regarding the execution of the Emerald Trail Subdivision Agreement, authorizing the entry into a Subdivision Agreement with Lally Homes Ltd. (the 'Developer') and the Corporation of the Town of Pelham detailing certain land conveyances, payments and dedications, and the conditions whereby development can occur;

AND WHEREAS it is deemed desirable to enter into the Subdivision Agreement for Emerald Trail Subdivision with Lally Homes Ltd. in order to control development of lands as described in Schedule 'A' of the Subdivision Agreement which is attached hereto and forms part of this by-law.

NOW THEREFORE the Council of the Corporation of the Town of Pelham enacts as follows:

1. **THAT** the Subdivision Agreement attached hereto and made part of this by-law be and is hereby approved; and
2. **THAT** provided Lally Homes Ltd. first satisfies the requirements mentioned in the Agreement attached to and forming part of this by-law that are to be satisfied prior to or at the time of execution of the Subdivision Agreement by Lally Homes Ltd. and the Corporation of the Town of Pelham, then the Mayor and Clerk are hereby authorized and directed to execute the Subdivision Agreement attached hereto and forming part of this by-law and once executed by all parties, the Agreement shall be registered upon the title to the lands described in Schedule 'A' of the said agreement.
3. **THAT** the conveyances, payments, and dedications required by the said Subdivision Agreement, are authorized and approved.
4. **THAT** in the event minor modifications to the Subdivision Agreement are necessary to effect the intent herein, the Clerk of the Town of Pelham is hereby authorized to complete same in consultation with the Town Solicitor.
5. **THAT** this By-law shall come into force and effect on the date that it is enacted.

Read, enacted, signed and sealed this 5th day of April, 2023.

Marvin Junkin, Mayor

William Tigert, Town Clerk

EMERALD TRAIL SUBDIVISION AGREEMENT
LALLY HOMES LTD.
(SUBDIVISION FILE NO. 26T19-01-2021)

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. DEFINITIONS	1
2. LANDS TO BE SUBDIVIDED	5
3. GENERAL PROVISIONS	5
4. SERVICING PLANS AND SPECIFICATIONS	7
5. DESIGN AND SUPERVISION OF CONSTRUCTION OF SERVICES.....	7
6. BY-LAW(S), DOCUMENTATION, AND REGISTRATION	9
7. LAND FOR MUNICIPAL PURPOSES.....	10
8. EASEMENTS FOR MUNICIPAL PURPOSES	10
9. GENERAL SERVICES	10
10. SURVEY MONUMENTS TO BE PRESERVED	12
11. TOWN’S RIGHT TO ENTER AND REPAIR.....	12
12. SERVICES TO BE COORDINATED	13
13. INTERIM WORKS	13
14. ROADS	13
15. SANITARY SEWER SYSTEM	14
16. STORM DRAINAGE SYSTEM.....	14
17. STORMWATER MANAGEMENT FACILITIES.....	15
18. WATER DISTRIBUTION SYSTEM	16
19. SIDEWALKS	17
20. DRIVEWAY APPROACHES	17
21. FENCING	17
22. STREET AND TRAFFIC SIGNS.....	17
23. ELECTRICAL DISTRIBUTION SYSTEM AND STREET LIGHTING	17
24. UTILITY SERVICES	18
25. TREE PLANTINGS.....	18
26. LANDSCAPING.....	19
27. EROSION AND SEDIMENTATION CONTROL.....	19
28. SUBDIVISION GRADING AND DRAINAGE	20
29. LOT GRADING AND DRAINAGE.....	21
30. PRIMARY SERVICES AND COMPLETION CERTIFICATE FOR PRIMARY SERVICES	22
31. SECONDARY SERVICES AND COMPLETION CERTIFICATE for SECONDARY SERVICES.....	23
32. MAINTENANCE OF THE SUBDIVISION	24

33. CERTIFICATE OF FINAL ACCEPTANCE..... 25

34. ASSUMPTION OF MUNICIPAL SERVICES 26

35. BUILDING PERMITS AND OCCUPANCY 26

36. TENDERS, INSURANCE, AND BONDING 28

37. SECURITY DEPOSITS AND REFUNDS 29

38. MAINTENANCE GUARANTEE..... 31

39. DEFAULT 32

40. INDEMNIFICATION 33

41. COVENANTS THAT RUN WITH THE LAND 33

42. NOTICE..... 33

43. SCHEDULES 34

44. SPECIAL PROVISIONS 34

45. NUMBER AND GENDER 34

46. BINDING EFFECT 34

TABLE OF SCHEDULES

SCHEDULE “A” LEGAL DESCRIPTION.....36

SCHEDULE “B” LANDS CONVEYED FOR PUBLIC PURPOSES.....37

SCHEDULE “C” REQUIRED MUNICIPAL EASEMENTS.....38

SCHEDULE “D” REQUIRED UTILITY EASEMENTS39

SCHEDULE “E” LIST OF APPROVED DRAWINGS.....40

SCHEDULE “F” FINANCIAL OBLIGATIONS AND COST OF CONSTRUCTION.....42

SCHEDULE “G” SPECIAL PROVISIONS.....43

SCHEDULE “H” BUILDING RESTRICTIONS.....48

THIS AGREEMENT made this _____ day of _____, 2023.

BETWEEN:

LALLY HOMES LTD.

Hereinafter called the "Developer"

OF THE FIRST PART

- and –

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter called the "Town"

OF THE SECOND PART

WHEREAS the Developer warrants and represents that:

- a) it is the registered owner in fee simple in possession of the lands described in Schedule "A" annexed hereto;
- b) as of the date of execution of this Agreement and on the date of registration of this Agreement, the Developer shall be a valid and subsisting corporation in good standing duly incorporated under the laws of the Province of Ontario;
- c) as of the date of execution of this Agreement, registration of this Agreement and registration of the Plan of Subdivision, there will be no outstanding claims, liens, or encumbrances registered against the lands described in Schedule "A" annexed hereto all of which shall be postponed to this Agreement unless otherwise authorized by the Town in writing; and
- d) this Agreement shall take priority over any subsequent registrations against the Lands;

AND WHEREAS the Developer has applied to the Town for approval of a Plan of Subdivision of the Lands described in Schedule "A" annexed hereto;

AND WHEREAS the Town's "Conditions of Draft Plan Approval" require that all conditions must be fulfilled before the aforesaid Plan of Subdivision is given final approval, and the Developer must enter into a Subdivision Agreement with the Town to satisfy all its requirements, financial and otherwise, relating to the Lands being subdivided;

AND WHEREAS this Agreement is made to satisfy the said Conditions of Draft Plan Approval;

AND WHEREAS subsection 51 (26) of the *Planning Act, 1990*, permits the registration of this Agreement against the lands to which it applies;

AND WHEREAS subsection 27 (1) of the *Development Charges Act, 1997*, permits the early payment of all or part of a development charge;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements to be observed and performed by each of the Parties hereto, and in consideration of the sum of ONE (\$1.00) DOLLAR of lawful money of Canada now paid by the Developer to the Town, the receipt whereof is hereby acknowledged by the Town, the Parties hereto mutually covenant and agree as follows:

1. DEFINITIONS

In this Agreement:

- 1.1 **AGREEMENT** means this Subdivision Agreement.

- 1.2 **ASSUMPTION BY-LAW** means a by-law passed by the Town accepting all of the Works to be constructed hereunder.
- 1.3 **BLOCK** shall mean the whole of a parcel or tract of land create by the Plan of Subdivision.
- 1.4 **BUILDER** means the person engaged by the Developer or subsequent Owner to construct a Building or any other work on the Lot.
- 1.5 **BUILDING BY-LAW** means the Building By-law No. 2686 (2005) passed by the Town and amended from time to time.
- 1.6 **BUILDING** means any structure which is used or intended to be used for the shelter, accommodation or enclosure of persons, animals or chattels, and includes any structure as defined as a Building in the *Building Code Act* or in the Building By-law, but does not include any vehicles as defined herein.
- 1.7 **BUILDING PERMIT** means a permit issued by the Chief Building Official of the Town and required pursuant to the provisions of the *Building Code Act*, as amended, or any successor thereto and the Building By-law of the Town and amendments thereto.
- 1.8 **CHIEF BUILDING OFFICIAL** means the Chief Building Official of the Town as appointed by by-law of the Council, or their designate appointed pursuant to the *Building Code Act*, as amended, or any successor thereto.
- 1.9 **CLERK** means the Clerk of the Town.
- 1.10 **COMPLETION CERTIFICATE OF PRIMARY SERVICES** means the Certificate issued by the Director of Public Works upon satisfactory completion of the Primary Services for the Lands prior to commencement of the maintenance period for the Primary Services as installed.
- 1.11 **COMPLETION CERTIFICATE OF SECONDARY SERVICES** means the Certificate issued by the Director of Public Works upon satisfactory completion of the Secondary Services for the Lands prior to commencement of the maintenance period for the Secondary Services as installed.
- 1.12 **COST OF CONSTRUCTION** means the cost of construction approved by the Director of Public Works and may include engineering fees ancillary thereto.
- 1.13 **COUNCIL** means the Council of the Corporation of the Town of Pelham.
- 1.14 **DEVELOPER** shall mean the applicant for the approval of a Plan of Subdivision and the registered owner or owners in fee simple of the lands for which the Plan of Subdivision is proposed and their respective heirs, executors, administrators, successors and assigns. Wherever the singular is used herein it shall, where the context requires, include the plural.
- 1.15 **DEVELOPER'S CONSULTING ENGINEER** means the person or persons registered with the Professional Engineers of Ontario who are employed by the Developer, at its own expense, to provide engineering services for the Plan of Subdivision.
- 1.16 **DEVELOPMENT CHARGES** means the development charges imposed under the Town's Development Charge By-law No. 4023 (2018), or any successor by-law, as prescribed by the *Development Charges Act, 1997*, as amended, or any successor thereto.
- 1.17 **DIRECTOR OF COMMUNITY PLANNING AND DEVELOPMENT** means the Director of Community Planning and Development for the Town, or their designate.
- 1.18 **DIRECTOR OF PUBLIC WORKS** means the Director of Public Works for the Town, or their designate.

- 1.19 **EASEMENTS** shall mean the easements described in Schedule "D" annexed hereto, which forms part of this Agreement.
- 1.20 **FINAL DEFAULT** means a situation where the Developer fails to remedy a default within such time as provided in the notice given by the Town, as provided in Section 39 hereof.
- 1.21 **FINAL CERTIFICATE OF COMPLETION OF SERVICES** means the certificate issued by the Director of Public Works after the end of the maintenance period certifying that all Works required by this Agreement are acceptable for assumption by the Town.
- 1.22 **FRONT LOT LINE** means the front lot line as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- 1.23 **GRADING CONFORMANCE CERTIFICATE** means the Certificate identified in Section 29 hereof.
- 1.24 **LANDS** means the lands described in Schedule "A" annexed hereto, and forming part of this Agreement.
- 1.25 **LETTER OF CREDIT** means a standby municipal, irrevocable Letter of Credit issued by a major chartered bank or credit union, posted with the Town pursuant to the terms of this Agreement. The Letter of Credit shall be in form satisfactory to the Town and shall contain a clause that automatically renews it from year to year, unless the Town gives written notice that it does not require the Letter of Credit to be renewed.
- 1.26 **LETTER OF OCCUPANCY** means a Letter of Occupancy issued by the Chief Building Official subsequent to final inspection of a dwelling, as required by Section 35 hereof.
- 1.27 **LOCAL IMPROVEMENT** shall include utilities, fencing, sanitary sewers, storm sewers, sidewalks, curbs and gutters, pavements and such other local improvements as are defined by the *Local Improvements Act* or the *Municipal Act*, as amended, or any successor thereto.
- 1.28 **LOT** means a lot as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- 1.29 **LOT FRONTAGE** means lot frontage as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- 1.30 **LOT GRADING DEPOSIT** means a deposit of security as specified in Section 30 hereof.
- 1.31 **LOT GRADING PLAN** means a drawing showing grades, swales, and drainage patterns and may include catch basins and floor heights in relation to grades for each individual Building Lot or Block in the Plan of Subdivision.
- 1.32 **MAINTENANCE GUARANTEE** means an undertaking by the Developer to the Town that all Works constructed under this Agreement will function as designed and will not fail in any manner whatsoever so as to cause a risk to public safety or private lands, Building or structures within the Plan of Subdivision or immediately adjacent boundary lands, and that should the Works, or any of them, fail or not perform their intended function within the specified maintenance guarantee period, they will be replaced or repaired to the satisfaction of the Director of Public Works by the Developer at its cost.
- 1.33 **MAINTENANCE GUARANTEE PERIOD** means the period of time during which the Developer is obliged to maintain the Works following approval of the Completion Certificate for Primary Services or Secondary Services, as the case may be, which period is defined in Section 38 hereof.
- 1.34 **ONTARIO LAND SURVEYOR** means a surveyor commissioned by the Province of Ontario and qualified to establish monuments that define the

boundaries of a parcel or parcels of land and to prepare all necessary reference plans and surveys for the purpose of the Agreement.

- 1.35 **OWNER** means the applicant for a Building Permit for one of the Lots or Blocks and includes the person on whose behalf an application for a Building Permit is made.
- 1.36 **PARTY** shall mean a party to the Agreement and the successors or permitted assigns.
- 1.37 **PLAN OF SUBDIVISION** means the Plan of Subdivision of the Lands described in Schedule "A" approved for registration by the Town and registered on title pursuant to the provisions of the *Planning Act*.
- 1.38 **PLANS** means all drawings, plans, specifications, contracts and other documents providing for the installation, construction and erection of the Works approved by and filed in the office of the Director of Public Works prior to execution of this Agreement by the Town.
- 1.39 **PRE-SERVINCING** means the installation of Works prior to registration of this Agreement.
- 1.40 **PRIMARY SERVICES** means all private utilities and all municipal services including, without restricting the generality of the foregoing, shall include: storm sewers, storm water management, sanitary sewers, watermain, roads (including base coarse asphalt and curbs and gutters), footpaths, street lighting, and drainage works and swales (including hydroseeding and landscaping).
- 1.41 **PRIVATE UTILITIES** means telephone, hydro-electric systems, natural gas systems, and cable television systems.
- 1.42 **REGION** means the Regional Municipality of Niagara.
- 1.43 **REGIONAL PUBLIC WORKS DEPARTMENT** means the Regional Municipality of Niagara Public Works Department.
- 1.44 **RESERVE STRIP** shall mean a parcel of land conveyed by the Developer to the Town in fee simple, free of encumbrances, abutting a Street Line and separating the street from the next abutting lot or block, for the purpose of preventing legal access from said street to the said next abutting lot or block.
- 1.45 **SECONDARY SERVICES** means all works to be installed, constructed, or erected which are not Primary Services or private utilities, and without limiting the generality of the foregoing, shall include: top course roadway asphalt, paved driveway aprons, sidewalks, fencing, and sodding/hydroseeding, landscaping, and tree plantings of boulevards and hydroseeding, landscaping and tree plantings of park blocks and stormwater management blocks.
- 1.46 **SECTION**, when used in reference to a numbered part of the Agreement, means:
- a) a complete section including all its sections and subsections;
 - b) a particular subsection including its subsections; and
 - c) a particular subsection as the context may dictate or require.
- 1.47 **STORM WATER MANAGEMENT FACILITY** means a system of physical works including but not necessarily only, such things as storm water structures or ponds and infiltration trenches or pits located at the downstream end of a storm sewer conveyance system (including roof rain water leaders) that are designed to treat storm water and control pollution and control storm water runoff to predetermined levels prior to discharge to receiving surface water courses and subsurface ground water regimens.

- 1.48 **STORM WATER MANAGEMENT REPORT** means an approved storm water management report and specifications prepared by the Developer in accordance with Section 17 of this Agreement.
- 1.49 **STREET** means street as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- 1.50 **STREET LINE** means Street Line as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- 1.51 **SUBDIVISION** means the division of a parcel of land into lesser parcels by means of a registered Plan of Subdivision.
- 1.52 **SUBDIVISION GRADE CONTROL PLAN** shall mean a plan for the purpose of controlling the overall drainage pattern through the establishment of relative surface elevations in accordance with good engineering and drainage practices as shown in Schedule "E", annexed hereto.
- 1.53 **SUPERVISION** means the full-time inspection and scrutiny of every phase of the Works for the express purpose of enforcing the provisions of this Agreement and certifying that the Works have been performed and completed to Town standards in the form prescribed for this purpose and "SUPERVISE" means to carry out such Supervision.
- 1.54 **TOWN** means The Corporation of the Town of Pelham.
- 1.55 **TREASURER** means the Director of Corporate Services for the Town, or their designate.
- 1.56 **UTILITY SERVICES** means physical plant including but not limited to pipes, valves, conduits, cables, terminals, transformers, etc. owned and operated by communications, television, hydro, gas and oil companies or any other utility companies.
- 1.57 **WORKS** shall jointly and severally mean and include all Primary Services and Secondary Services and all other matters, both internal and external, and all construction, erection, installation and engineering required to be completed or performed by the Developer pursuant to this Agreement.

2. LANDS TO BE SUBDIVIDED

The Lands to be subdivided by the Plan of Subdivision are those lands described in Schedule "A" annexed hereto and the Plan of Subdivision shall be registered against all of such Lands.

3. GENERAL PROVISIONS

- 3.1 Unless the context or any other collateral agreements between the Town or the Developer otherwise requires, where the Developer is obliged by this Agreement or the approved Plans to make payments or install or construct or carry out any services or action the provisions therefore contained herein shall be deemed to include the words "at the sole expense of the Developer".
- 3.2 The Developer hereby covenants, warrants and agrees to save harmless and keep the Town and its agents, contractors, employees and elected officials indemnified from and against all manner of actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly by reason of the design, installation, construction, or operation of any of the Works required under this Agreement, or by reason of the maintenance or lack of maintenance of such Works by the Developer pursuant to the terms of this Agreement or by reason of any defect in workmanship or material.
- 3.3 The Developer and the Town acknowledge and agree that it is their intent that all terms, conditions and covenants contained herein:
 - a) shall run with the Lands; and,

- b) shall be binding upon the Developer, its heirs, executors, administrators, assigns and successors in title, from time to time; and,
 - c) the benefits of the said covenants shall enure to the Town, its successors and assigns in title, of all roads, streets, and public Lands forming part of or abutting on the Lands.
- 3.4 Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in the manner set out in Section 42.
- 3.5 This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto and upon those persons and/or corporations hereafter acquiring title to all or any part of the Lands.
- 3.6 The Developer shall impose restrictions as set forth in Schedule "H" annexed hereto on all the Lands so that subsequent Owners will be made aware of and shall strictly adhere to the requirements of this Agreement.
- 3.7 The Schedules annexed hereto, being Schedules "A" to "H" inclusive, are deemed to be a part of this Agreement and are to be interpreted as if the contents thereof were included in this Agreement.
- 3.8 The Developer agrees to be bound by the penalty provisions set forth in Section 67 of the *Planning Act, 1990*, and amendments thereto.
- 3.9 In constructing, installing or providing the Works, the Developer shall comply with all statutes, laws, by-laws, regulations, ordinances, orders and requirements of any governmental or other public authorities having jurisdiction at any time from time to time enforced. Without limiting the foregoing, the Developer agrees to comply with and cause to be complied with, the provisions of the *Occupational Health and Safety Act*, the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Safe Drinking Water Act* and any regulations, policies and guidelines relating thereto. The Developer further agrees to handle and dispose of all materials in accordance with the foregoing legislation.
- 3.10 The Developer shall do, cause to be done, or refrain from doing any act or thing as directed by the Town if at any time the Town considers that any situation or condition is unsafe, damaging to the environment, or contrary to the provisions of any applicable laws. If the Developer fails to comply with such direction, the Town may take action to remedy the situation at the expense of the Developer and in this regard the Town shall also be entitled to draw upon any security filed by the Developer under this Agreement.
- 3.11 If any term of this Agreement shall be found to be *ultra vires* of the Town, or otherwise unlawful, such term shall conclusively be deemed to be severable and the remainder of this Agreement *mutatis mutandis* shall be and remain in full force and effect.
- 3.12 The Developer shall not call into question directly or indirectly, in any proceeding whatsoever in law or in equity, or before any court or administrative or other tribunal, the right of the Town to enter into this Agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the Town in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.
- 3.13 Time shall be of the essence of this Agreement.
- 3.14 Prior to execution of this Agreement by the Town, the Developer shall deliver to the Town a Certificate of Status issued by the Ontario Ministry of Government and Consumer Services verifying that the Developer is a company duly incorporated under the laws of the Province of Ontario and is in good standing.

- 3.15 The Developer hereby agrees to procure, register and provide to the Town any postponement agreements which the Town solicitor considers necessary to ensure that this Agreement shall have priority over any interest of a mortgagee in the Lands.
- 3.16 The Developer shall notify or cause to be notified each and every purchaser of a Lot or Lots or Block or Blocks of all Works contracted by the Developer, the Developer's obligations to maintain the Works and all other conditions covered by this Agreement by providing a complete and accurate summary of same and shall cause such information to be fully recorded in any Offer to Purchase or Agreement of Purchase and Sale entered into by the Developer.
- 3.17 In the event that a Mortgagee(s) exercises any rights as to sale, possession or foreclosure or takes any other steps to enforce its security against the Lands then such Mortgagee(s) agrees on behalf of itself, its heirs, executors, administrators, successors and assigns not to deal with the Lands as a subdivision or part thereof unless and until a new agreement in the same form, *mutatis mutandis*, as this Agreement has been entered into with the Town.
- 3.18 In the event that the Developer wishes to register more than one Plan of Subdivision over the Lands, the Developer shall first obtain the written consent of the Town to do so, which consent shall be conditional upon the Developer registering such Plans of Subdivision in such order as determined by the Town and upon registering such Plans of Subdivision concurrently. The Developer shall not register a Plan of Subdivision over part of the Lands without prior written consent of the Town.
- 3.19 Any and all of the Developer's obligations under this Agreement shall be joint and several.

4. SERVICING PLANS AND SPECIFICATIONS

- 4.1 All Plans and specifications must be approved in writing by the Director of Public Works prior to the execution of this Agreement by the Town and the Developer commencing construction of any of the Works.
- 4.2 The Developer shall submit to the Director of Public Works three (3) copies of each plan required to be submitted for approval with respect to the construction of the Works contemplated in this Agreement.
- 4.3 It is understood and agreed the Director of Public Works in their appraisal of the Plans and specifications will be guided by current requirements of the Province of Ontario, established specifications and standards adopted by the Town, or existing practices and standards as may from time to time be established or amended by the Town by its officials or agents. The Town may require, in writing, such variances from the Plans as it may deem appropriate due to conditions which may be disclosed as the work progresses and by sound engineering practices.
- 4.4 No approval by the Director of Public Works shall operate as a release by the Town of any liability of the Developer which, but for such approval, might exist or hereafter arise.
- 4.5 All Plans shall be prepared and stamped by a Consulting Engineer or an Ontario Land Surveyor licensed to practice in the Province of Ontario.

5. DESIGN AND SUPERVISION OF CONSTRUCTION OF SERVICES

- 5.1 The Developer shall employ, at its cost, a competent and qualified Consulting Engineer approved by the Director of Public Works, to:
- a) carry out all soil investigations to the satisfaction of the Director of Public Works;
 - b) design all of the Works required to be completed by this Agreement;
 - c) prepare plans, profiles and specifications for the Works and submit

detailed plans, profiles and specifications to the Director of Public Works for approval prior to the installation or construction of such Works;

- d) obtain from the Director of Public Works the details regarding the form and scale of these drawings prior to their presentation;
- e) obtain and provide the Town with all necessary approvals prior to installation or construction of the Works and prior to execution of this Agreement;
- f) prior to execution of this Agreement, prepare and furnish the Director of Public Works with estimates of the cost of installation and construction of said Works;
- g) if required, prepare contract documents and call tenders for the installation and construction of the said Works;
- h) provide full-time resident supervision, inspection and contract administration of all Works covered by this Agreement including watermain commissioning;
- i) maintain all records for the installation and construction of the said Works and submit "as constructed" records in electronic form in AutoCad format (NAD 83 coordinates) and PDF format, and two (2) sets "as constructed" records shall be submitted in a reproducible form to the Director of Public Works, at the time of completion of Primary Services (including all street light and utility services) prior to approving the Completion Certificate for the Works.
- j) upon completion of the installation or construction of the Works, supply the Town with a certificate, in a form satisfactory to the Director of Public Works, that the Works were installed and constructed in accordance with the approved Plans and specifications;
- k) provide the Director of Public Works with individual record sheets for all sewer and water service locations and depths;
- l) when requested by the Director of Public Works, accompany them on inspections of the Works including a final inspection of the Works at the conclusion of the maintenance period herein specified and before the assumption of the Works by the Town;
- m) supervise the construction of all Works on a full-time basis including any remedial work which the Director of Public Works may require;
- n) test all services and verify to the Director of Public Works, in writing, that all testing has been completed in accordance with the appropriate requirements;
- o) provide building levels for construction purposes; and,
- p) certify, in writing, to the Director of Public Works, as to the actual cost of all Works completed, prior to the Town approving a Completion Certificate for such Works or reducing any Letter of Credit.

5.2 The Developer shall not install Works prior to the receipt, in writing, of the approval of the detailed Plans and specifications by the Director of Public Works.

5.3 All of the Primary, Secondary, and Utility Services to be installed or constructed under this Agreement shall be installed, constructed, inspected and tested under the direct supervision of the Developer's Consulting Engineer at the sole expense of the Developer.

5.4 The Developer's Consulting Engineer shall conduct all testing of Works and materials to the complete satisfaction of the Director of Public Works. All sanitary and storm sewers must be inspected and videoed via closed circuit

T.V. prior to final acceptance by the Town.

- 5.5 The Director of Public Works, or designate, shall have the right at any time and from time to time to request an inspection and re-inspection of any of the Works in progress to ensure such Works are being constructed in accordance with the Plans and specifications approved by the Director of Public Works. Such inspections may include testing and the method and time of testing shall be at the sole discretion of the Director of Public Works. Town inspections shall be in addition to inspections provided by the Developer's Consulting Engineer and shall in no way relieve the Developer or their Consulting Engineer of any responsibility with regard to design, construction, inspection, testing or proper completion of the Works.
- 5.6 The Director of Public Works shall have a discretionary right to order any work-in-progress stopped and such work shall not be recommenced without written authority from the Director of Public Works.

6. BY-LAW(S), DOCUMENTATION, AND REGISTRATION

- 6.1 The Council may authorize Pre-Servicing (installation of Works) upon such terms and conditions it deems appropriate and/or necessary, which terms and conditions shall include, but not be limited to, posting all security set forth in Schedule "F" annexed hereto, obtaining and filing with the Director of Public Works all necessary and/or required approvals, consents, agreements and certificates, and having all Plans and specifications approved by the Director of Public Works.
- 6.2 Before this Agreement is executed by the Town, the appropriate authorizing By-law must be enacted by the Council of the Town.
- 6.3 The Developer shall provide the Town with two (2) paper copies and a PDF format copy each of the draft Plan of Subdivision (M-Plan) for the Lands and the Reference Plan (R-Plan) providing legal descriptions for Easements within or outside the Lands.
- 6.4 The Developer acknowledges that the Town may register an Inhibiting Order against the Lands and that the Town will not have the Inhibiting Order removed from title until the Developer has supplied all documents in compliance with this Agreement in a form satisfactory to the Town for registration and all other documents required to provide discharges, releases, and postponements with respect to any charges, mortgages or encumbrances with respect to the Lands that have been registered against title to the Lands.
- 6.5 Upon the Town being satisfied that all conditions of Draft Plan approval for the Plan of Subdivision have been satisfied by the Developer within the required time, the Town shall register the following documentations at the sole expense of the Developer as soon as practicable:
 - a) the approved Plan of Subdivision; and,
 - b) all other documentation related thereto, including without limitation, Cessations of Charge, Transfers, and Easements.
- 6.6 In the event the Plan of Subdivision is not registered within one (1) year from the date of registration on title of this Agreement, the Town may declare the Developer in Final Default.
- 6.7 The Developer shall not deal in any manner whatsoever with any Lot or Block shown on the Plan of Subdivision until this Agreement, the Plan of Subdivision and all other documentation (including Transfers, Easements, Cessation of Charge, Inhibiting Orders, Reference Plans, and Postponements of Charges) required by this Agreement and by the Town's solicitor have been delivered, approved and registered on title to the complete satisfaction of the Town's solicitor.

7. LAND FOR MUNICIPAL PURPOSES

- 7.1 The Developer shall, at its own expense, convey to the Town in fee simple, free of all encumbrances, such lands as may be required for the development of the Lands in accordance with Schedule "B" annexed hereto.
- 7.2 All of the road allowances and road widenings shown on the Plan of Subdivision shall be dedicated by the Developer as public highways.
- 7.3 All road allowances shown on the Plan of Subdivision shall be named to the satisfaction of the Town.

8. EASEMENTS FOR MUNICIPAL PURPOSES

- 8.1 The Developer covenants and agrees, at its sole expense, to obtain and/or grant to the Town such easements as may be required for the installation and construction of services or development of the Lands in accordance with Schedule "C" annexed hereto.
- 8.2 The Developer shall convey to the Town or to such public utility company or commission or cable television company as the Town may direct, easements required for utility and/or co-axial purposes in accordance with Schedule "D" annexed hereto. All such easements shall be prepared to the complete satisfaction of the Town, and if required by the Town, any such utility or cable television company.
- 8.3 The Developer shall undertake and complete all improvements in, over, along and upon such easement lands conveyed to the Town, including Primary Services, Secondary Services and Utility Services, in accordance with the terms of this Agreement and the Plans filed to the complete satisfaction of the Director of Public Works and shall keep such easement lands in a neat and tidy condition, free of all debris and trash until the Town has passed the Assumption By-Law.

9. GENERAL SERVICES

- 9.1 Where the Plan of Subdivision is serviced by a secondary means of egress or emergency access to be constructed by the Developer, an existing road allowance, open or unopened, or any newly dedicated widening thereof, the Developer agrees such secondary means of egress or emergency access, road allowance and any widening thereof shall be deemed to form part of the Lands and be subject to the requirements related thereto specifically indicated in the approved Plans.
- 9.2 Where it is necessary to use a secondary means of egress or emergency access to be constructed by the Developer or an unopened road allowance to service all or any part of the Lands, the Developer shall, at its own expense, construct the necessary municipal services in accordance with the approved Plans.
- 9.3 The Developer shall not change, or do any work that will prejudicially effect, any natural watercourse or drainage ditch without making full and proper provisions satisfactory to the Director of Public Works, and the Developer shall be solely responsible for any damage caused thereby and the Developer hereby indemnifies and saves harmless the Town from any claim arising from such damage.
- 9.4 The Developer shall keep all portions of the development well, properly, and efficiently drained during construction and completion and will be held responsible for all damage which may be caused or results from water backing up or flowing over, through, from or along any part of the Works, or which any of the Developer's operations may cause to flow elsewhere, and the Developer hereby indemnifies and saves harmless the Town from any claim arising from said damage.
- 9.5 The Developer covenants and agrees to carry out all Works necessary to service the Plan of Subdivision in such a manner as to prevent erosion and

earth, debris and other material from being washed or carried in any manner onto any road, road allowance or highway whether opened or unopened, or onto the property of any other person or persons. If such earth, debris or other material is washed or carried onto such road, road allowance, whether opened or unopened, or onto the property of any person or persons, the Town, its servants or agents, may, at the Town's discretion, clean and remove such material, rectify any damage caused, and abate any nuisance created by the Developer in the development of the Plan of Subdivision. The cost of any such work performed by or at the instruction of the Town, shall be paid by the Developer on demand, and without limiting any of its remedies at law or in equity, the Town may enforce any security available to it to recover such costs or may collect such costs in like manner as municipal taxes as provided in the *Municipal Act* and with the same priorities as taxes that are overdue and payable.

- 9.6 The Developer shall be solely responsible for controlling dust nuisance in conjunction with the Works, both within the Plan of Subdivision and elsewhere.
- 9.7 All streets abutting on the Lands or used for access to the Lands during installation or construction of the Works or during construction of dwellings shall, at all times, be kept as dust free as possible and in a good and usable condition, and without restricting the generality of the foregoing, the Developer shall at the end of each day during such construction cause all such streets to be cleaned of all refuse, rubbish, waste, debris and other materials of any kind, whether the same resulted from installation and construction of Works or otherwise, and if such streets are damaged the Developer shall at its own cost restore same immediately to the Town's requirements and to the satisfaction of the Director of Public Works.
- 9.8 All trucks making deliveries to or taking materials from the Lands shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting streets or properties. If at any time, in the opinion of the Director of Public Works, damage is being or is likely to be done to any street or any improvement thereon, other than such portions as are part of the Works, by the Developer's or its contractor's vehicles or other equipment, whether licensed or unlicensed, the Developer or its contractor shall on the direction of the Director of Public Works make changes in or substitutions for such vehicles or other equipment or shall alter loading or shall in some other manner satisfactory to the Director of Public Works remove the cause of such damage or nuisance. The Developer shall at its own cost repair any such damage immediately to the Town's requirements and to the satisfaction of the Director of Public Works.
- 9.9 The Developer shall inform all public utility companies having legal authority to install or construct utility systems (including without limitation Bell Canada, Enbridge Consumers Gas, Niagara Peninsula Energy, Hydro One Networks Inc., Cogeco Cable) of the approximate date of construction of the Works in order that such utility companies may place their work in accordance with their requirements and to the satisfaction of the Director of Public Works, and the Developer shall assume complete responsibility and make all necessary arrangements for the moving of hydro-electric, gas, telephone and co-axial cables, pipes, conduits, wires, pipe lines, or any other public utility works as necessary and as approved by the Director of Public Works, and the Developer shall be solely responsible for any damage caused to the said cables, pipes, conduits, wires, pole lines and other works.
- 9.10 The Town disclaims any responsibility or liability for the support and protection of sewers, drains, pipes, conduits, tracks or other utilities, services and structures owned by the Town or any other public body, by companies, or any other person enjoying special franchises or occupying any portion of the streets or ways on or below or above the surface. The Developer is directed to carefully examine the location of the Works and to make special inquiry of the companies or persons owning, controlling or operating said pipes, conduits, tracks and other utilities, services and structures, and to determine the character, size, position and length of such pipes, conduits, tracks, utilities and structures, and to inspect the public records of the various Town

Departments having recognizance and control of pipes, conduits and sewers, and to make such further personal inspection and investigation as is necessary to determine the correctness of the information so obtained. It is the Developer's responsibility to consult the companies concerned as to the exact location of said utilities, services and structures, and, where necessary, the Developer shall protect and support same to maintain their operation. In the event damage is done to a utility, service or structure the Developer thereof shall be notified immediately by the Developer and any costs arising from such damage shall be paid for by the Developer. A copy of such notice shall be sent to the Director of Public Works.

- 9.11 The Developer agrees to keep boulevards and Easements graded and free and clear of all material and obstructions which might interfere with the construction of telephone, co-axial, gas and hydro-electric installations, and other utility works.
- 9.12 The Developer shall remove from all road allowances in the Plan of Subdivision, any surplus or other material and obstructions and such trees and vines, as necessary and to the satisfaction of the Director of Public Works. In the event this clause is not complied with within fourteen (14) days of written notice delivered by the Town to the Developer, the Town may have such material removed and collect the cost thereof from the Developer, and without limiting its remedies at law or equity, the Town may enforce any security held by it to recover costs or may collect the costs in like manner as municipal taxes as provided in the *Municipal Act* and with the same priorities as taxes that are overdue and payable.
- 9.13 The Developer shall not add any fill to the Lands without first obtaining written approval from the Director of Public Works.
- 9.14 The Developer shall not remove any topsoil from the Lands without first obtaining written approval from the Director of Public Works.
- 9.15 All Works required to be installed or constructed by the Developer shall be installed and constructed in accordance with the Town's specifications therefor at the date of the commencement of the installation or construction of the Works and in accordance with the approved Plans.
- 9.16 The Developer acknowledges and agrees, notwithstanding the complete installation of services in the subdivision as authorized by the Town, that the Town will not be held liable for any stoppage or delay of the registration of the Plan or the issuance of Building Permits for the lots in the Plan.
- 9.17 The Developer acknowledges and agrees that in the event that the Lands are not maintained in an acceptable standard to the Town in regards to refuse, rubbish, dust or debris or if refuse, rubbish, dust or debris from the Lands are found on abutting streets or properties and are not removed in an acceptable standard to the Town that the Town may bill the Developer for the removal of refuse, rubbish, dust or debris from the Lands or on abutting streets or properties impacted by the development of the Lands.

10. SURVEY MONUMENTS TO BE PRESERVED

- 10.1 The Developer agrees that all survey monuments or related markings established in connection with the installation of public utility and municipal services are to be preserved.
- 10.2 The Developer agrees if any survey monument or related marking is accidentally or deliberately damaged, destroyed or removed, to immediately repair or replace such monuments or related markings under the direction of the person or persons responsible for establishing said survey monuments or related markings.

11. TOWN'S RIGHT TO ENTER AND REPAIR

- 11.1 The Town shall have the right to enter on the Lands at all times and from time to time and to carry out maintenance and repair of the Works:

- a) without notice to the Developer where, in the sole opinion of the Director of Public Works, danger to public safety or an emergency condition exists, or the streets have not been kept free of mud, dust and/or snow or to prevent damage or hardship to any persons or property; and,
- b) where repairs to or maintenance of the said Works has not been completed within twelve (12) hours after written notice requiring such repairs or maintenance has been delivered to the Developer; and,
- c) such repairs, remedial works or maintenance shall not be deemed acceptance of the Works by the Town or an assumption by the Town of any liability in connection therewith and shall not release the Developer from any of its obligations under this Agreement; and,
- d) the cost of any repair or maintenance work (including professional fees) undertaken by the Town pursuant to the provisions of this Agreement shall be borne by the Developer and the amount thereof shall be paid to the Town within thirty (30) days after a statement of account therefor has been delivered to the Developer. If the Developer fails to pay the amount due to the Town within such thirty (30) day period, the Town may and is hereby expressly authorized by the Developer to deduct the amount owing to the Town for such repairs or maintenance from any monies or Letter of Credit deposited with the Town; and,
- e) repairs or maintenance undertaken by the Developer pursuant to this subsection shall be completed in the presence of the Director of Public Works or their representative.

11.2 The Developer shall obtain from any Purchaser of any of the Lots or Blocks shown on the Plan of Subdivision, a license permitting the Developer and the Town to enter upon such Lands for a period of three (3) years after the transfer thereof in order to ensure compliance with the provisions of this Agreement and shall forward an executed copy of such license to the Town upon demand therefor.

12. SERVICES TO BE COORDINATED

The Developer agrees and acknowledges that the designs of all municipal and public utilities and services for the subdivision of the Lands must be co-ordinated with all adjacent developments to ensure secondary access, service main looping and other integration and co-ordination of utilities and services.

13. INTERIM WORKS

The Developer agrees and acknowledges that, until the Director of Public Works affixes their signature of approval to the Plans, all works which may be carried out in the interim are done solely and entirely at the Developer's risk, and that changes to existing works or additional works may be required or reflected in the final approved Plans.

14. ROADS

14.1 The Developer agrees to construct, install, and complete all road Works required by this Agreement and the approved Plans and specifications to the complete satisfaction of the Director of Public Works.

14.2 The Developer agrees to rough grade to the Town's specifications the full width of all road allowances as shown on the Plans prior to the installation or construction of the Works. Prior to the construction of any Works, the topsoil shall be stripped and shall be stockpiled during the period of construction at a location which is approved by the Director of Public Works and is conducive to the interim drainage requirements of the Plan of Subdivision. The topsoil

so stockpiled shall be used to grade the Lots and boulevards after construction thereon in accordance with the Subdivision Grade Control Plan filed with and approved by the Director of Public Works.

- 14.3 The Developer shall restore any existing road damaged during the development of the Plan of Subdivision to the complete satisfaction of the Director of Public Works, prior to approval of the Completion Certificate for Primary Services.

15. SANITARY SEWER SYSTEM

- 15.1 If required by the Town, and prior to execution of this Agreement by the Town, the Developer shall undertake a review of the existing downstream sanitary sewer system to ensure the capacity of the system is sufficient for the increase in flows from the Plan of Subdivision. In the event the downstream system is inadequate for the flow increase from this Subdivision, upgrading of those facilities will be the financial responsibility of the Developer and the Work required and/or necessary to upgrade such facilities shall be completed by the Developer as part of development of this Plan of Subdivision to the complete satisfaction of the Director of Public Works.
- 15.2 The Developer shall construct a sanitary sewer system, including service laterals from the sewer main to the Street Line and other appurtenances, to adequately service the Lands. All sanitary sewers, including upgrading of downstream facilities if deemed necessary by the Town, shall be constructed according to the approved Plans and specifications. Plans must be approved by the Director of Public Works, the Region of Niagara Public Works Department and the Ministry of the Environment, and the construction and materials used therein shall be in accordance with the Town's most recent specifications therefor.
- 15.3 All sanitary sewer Works shall be flushed and cleaned by high velocity sewer flushing equipment:
- a) after placement of the base course asphalt upon the streets in the Plan of Subdivision; and,
 - b) upon receipt of any written notice from the Director of Public Works.
- 15.4 All sanitary sewer Works shall be tested, and if necessary re-tested, and the method and time of testing shall be to the satisfaction of the Director of Public Works.
- 15.5 All sanitary sewer Works shall be inspected and videoed via closed circuit TV to the satisfaction, and upon any written notice from, the Director of Public Works and prior to assumption of the sanitary sewer Works by the Town. In the event the results are not satisfactory in the sole opinion of the Director of Public Works, the Developer shall take such remedial steps as may, in the sole opinion of the Director of Public Works, be required.
- 15.6 Prior to the Director of Public Works approving the Completion Certificate for Primary Services, the Developer shall supply the Director of Public Works with "as constructed drawings" showing the location and depth of the sanitary sewer lateral constructed to service each Lot.
- 15.7 Prior to registration of the Plan, the Region shall confirm that adequate sanitary sewage allotment is available.
- 15.8 The Developer agrees to perform and complete all sanitary sewer Works required by this Agreement and the approved Plans and specifications to the complete satisfaction of the Director of Public Works.
- 15.9 The Developer agrees to decommission any existing water services to the satisfaction of the Director of Public Works.

16. STORM DRAINAGE SYSTEM

- 16.1 The Developer shall construct a storm drainage and storm water management

system to adequately service the Lands and all or any portion of the ultimate drainage area in which the Lands are located. This system shall be constructed in accordance with the Plans approved by the Director of Public Works, the Region of Niagara Planning & Development Department, the Niagara Peninsula Conservation Authority, and the Ministry of the Environment, and the construction and materials used therein shall be in accordance with the Town's most recent specifications therefor.

- 16.2 All storm sewer Works shall be flushed and cleaned by high velocity sewer flushing equipment:
- a) after placement of the base course asphalt upon the streets in the Plan of Subdivision; and,
 - b) upon receipt of any written notice from the Director of Public Works.
- 16.3 All storm sewer Works shall be inspected and videoed via closed circuit TV to the satisfaction of, and upon any written notice from, the Director of Public Works and prior to assumption of the storm sewer Works by the Town. In the event the results are not satisfactory in the sole opinion of the Director of Public Works, the Developer shall take such remedial steps as may, in the sole opinion of the Director of Public Works, be required.
- 16.4 Prior to the Director of Public Works approving the issuance of the Completion Certificate for Primary Services, the Developer shall supply the Director of Public Works with "as constructed drawings" showing the location and depth of the storm sewer lateral constructed to service each Lot.

17. STORMWATER MANAGEMENT FACILITIES

- 17.1 The Developer agrees that prior to the Town executing this Agreement the Developer shall prepare and provide a Storm Water Management Report which shall be submitted for approval by the Director of Public Works, the Region of Niagara Planning & Development Department, the Ministry of the Environment, the Niagara Peninsula Conservation Authority and the Region of Niagara Public Works Department, indicating the following:
- a) the manner in which storm water will be conveyed across the Lands in both major and minor storms, using storm water management techniques that are in accordance with the Provincial guidelines contained in "Storm Water Management Practices Planning & Design Manual - June 1994" (Ministry of Environment) and the latest revision thereof or such more stringent standards as may be applicable;
 - b) an assessment of downstream and upstream constraints and how these constraints can be addressed (at a minimum the storm water management system must provide Level 1 protection for downstream fisheries and resources); and,
 - c) an Erosion and Sediment Control Plan for the development of the Lands whereby erosion and sediment and their effects will be minimized on site during and after construction in accordance with the "Ontario Guidelines on Erosion and Sediment Control for Urban Construction Sites" May 1987 and the latest revision thereof or such more stringent standards as may be applicable.
- 17.2 The Developer shall prepare and provide a Subdivision Grading Plan in accordance with Section 28 hereof indicating the existing and proposed grades as well as the means whereby major system flows will be conveyed across the Lands. The 100-year flood level shall be plotted on the Plan to ensure that all structural development will be located above this elevation.
- 17.3 The Developer agrees to implement the Niagara Peninsula Conservation Authority's approved Storm Water Management Plan including the approved grading and drainage, any required erosion and flood protection works, and all Niagara Peninsula Conservation Authority approvals.

- 17.4 The Developer agrees to carry out or to have carried out all storm water management techniques and Works necessary and/or required to convey storm water runoff from the Lands in accordance with the approved Subdivision Grading Plan and Storm Water Management Plan to the complete satisfaction of the Director of Public Works and the Region of Niagara Planning & Development Department.
- 17.5 Immediately prior to assumption the Developer will:
- a. Remove all sediment deposits from the Stormwater Management Facility;
 - b. Prepare and submit a Final Stormwater Management Report;
 - c. Restore the Stormwater Management Facility to a condition where it meets all of the performance requirements set out within the Final Stormwater Management Report submission and the approved drawings in accordance with the Final Stormwater Management Report as reviewed and accepted by the Director of Public Works; and
 - d. Undertake all maintenance to correct all deficiencies such as erosion, restoration of plantings or vegetation which has not been taken, has died, or was removed as part of the sediment removal process in accordance with the Final Stormwater Management Report as reviewed and accepted by the Director of Public Works.

18. WATER DISTRIBUTION SYSTEM

- 18.1 The Developer shall construct a complete water supply and distribution system, including valves, valve boxes, fire hydrants, service connections, curb stops and boxes, blow offs and ground hydrants as may be required, for the purpose of servicing the Plan of Subdivision. The water distribution system shall be constructed in accordance with the Plans approved by the Director of Public Works, the Region of Niagara Public Works Department and the construction and materials shall be in accordance with Town's most recent specifications therefor. All work on water distribution system shall be performed in accordance with Ontario Regulation 170/03 made under the *Safe Drinking Water Act*, 2002, S.O. 2002, c.32, as amended and the Town's DWWP and DWWL.
- 18.2 The Developer shall install, charge, test, and maintain fire hydrants as required by the approved Plans and specifications in accordance with this Agreement to the complete satisfaction of the Town of Pelham Fire Department and the Director of Public Works.
- 18.3 The water supply and distribution system shall be designed to accommodate residential and fire flows with the minimum size of 150 mm in diameter.
- 18.4 All water mains shall be flushed, chlorinated, pressure tested, and bacterial tested in accordance with Town standards and to the satisfaction of the Director of Public Works prior to approval of the Completion Certificate for Primary Services.
- 18.5 The operation of valves which cause the water mains within the Plan of Subdivision to be charged from existing municipal water mains SHALL ONLY be carried out by Town Staff. All work on water distribution system shall be performed in accordance with Ontario Regulation 170/03 made under the *Safe Drinking Water Act*, 2002, S.O. 2002, c.32, as amended and the Town's DWWP and DWWL. The Town has an approved Quality Management System for the Pelham Distribution System and the Developer and its contractors shall be aware and informed of the Quality Management System.
- 18.6 The Developer shall, prior to the Director of Public Works approving the issuance of the Completion Certificate for Primary Services, supply the Director of Public Works with "as constructed drawings" showing the location and depth of the water connections constructed to service each of the Lots.

19. SIDEWALKS

- 19.1 The Developer shall, at its sole expense, construct, install and complete concrete sidewalks in accordance with the approved Plans filed and specifications therefor.
- 19.2 All sidewalks shall be deemed to be Secondary Services for the Plan of Subdivision and shall be completed within six (6) months of occupancy of each dwelling, except between November 15th and April 15th at which time the sidewalks must be installed as soon as possible, at the locations shown on the Plans and in accordance with the approved Subdivision Grade Control Plan or as amended by the Director of Public Works. The sidewalks are to be constructed in their entirety in block long sections.

20. DRIVEWAY APPROACHES

- 20.1 Each Lot and Block shall be serviced with a driveway approach constructed in accordance with the Plans filed to the complete satisfaction of the Director of Public Works.
- 20.2 The Developer shall provide driveway curb cuts and granular driveway access on the boulevard prior to occupancy of any Building. It shall be the responsibility of the Developer to ensure that driveway access is maintained at all normal times during the construction or maintenance of the Works.
- 20.3 All driveway approaches (aprons) between the curb line and the sidewalk, or in the absence of a sidewalk between the curb line and the Street Line, shall be installed and paved by the Developer by no later than the 1st day of November in the year after the year in which the Buildings served by the driveway approaches are occupied in accordance with the approved plans and specifications therefor prior to the Director of Public Works approving the Completion Certificate for Secondary Services.
- 20.4 All driveway approaches shall be constructed to the satisfaction of the Director of Public Works prior to the assumption of the Plan of Subdivision and no curbstops shall be allowed in driveways.
- 20.5 All driveway approaches are to conform to OPSD 351.010. The Developer shall be responsible for ensuring all approaches conform to this until the Town assumes all works in the subdivision.

21. FENCING

- 21.1 The Developer shall, at its sole expense, construct fencing in accordance with the approved Plans filed and specifications therefor.
- 21.2 No gates shall be permitted in fencing that abuts the park.

22. STREET AND TRAFFIC SIGNS

- 22.1 The Developer shall erect and maintain temporary traffic signs and such other traffic control devices to the satisfaction of the Director of Public Works during the construction period.
- 22.2 The Developer shall pay for all permanent street pavement markings, traffic signs and other traffic control devices as required by the approved Plans, in accordance with OTM Books 5 & 18 and to the satisfaction of the Director of Public Works, in accordance with Schedule "F" annexed hereto.

The Town shall be responsible to supply and install all permanent street and traffic control signs to the current standards of the Town.

23. ELECTRICAL DISTRIBUTION SYSTEM AND STREET LIGHTING

- 23.1 The Developer shall arrange with Niagara Peninsula Energy/Hydro One Networks Inc. for the design provision and installation of all electrical transmission and distribution system and street lighting system required to

service all of the Lots shown on the Plan with electrical power in accordance with the plans and specifications therefor approved by Niagara Peninsula Energy/Hydro One Networks Inc. and the Director of Public Works. All such facilities shall be installed underground unless specific external systems are approved by Niagara Peninsula Energy/Hydro One Networks Inc. and the Director of Public Works. The cost of providing such facilities shall be borne by the Developer.

- 23.2 The Developer shall arrange with Niagara Peninsula Energy/Hydro One Networks Inc. for local electrical supply connections and appurtenances thereto from the distribution system to terminals on abutting private property. The wiring for such service connections shall be underground. The cost of providing such service connections and appurtenances shall be borne by the Developer and the Developer shall pay the cost thereof to Niagara Peninsula Energy/Hydro One Networks Inc. upon receipt of a statement of account therefor.
- 23.3 The Developer shall design and provide a decorative street lighting system to the satisfaction of the Director of Public Works and the Director of Community Planning and Development.
- 23.4 Prior to the Director of Public Works approving the Certificate of Final Acceptance for Primary Services, the Developer shall deliver to the Town satisfactory proof of installation and construction of the aforesaid electrical transmission and distribution system and the street lighting system, which shall have been approved and/or accepted by a utility supplier satisfactory to the Town, and upon Council passing the Assumption By-law the Town will assume the street lighting system into the Town's street light inventory. Energizing of the street lights will be undertaken by Town staff.

24. UTILITY SERVICES

- 24.1 All Utility Services required to service the Plan of Subdivision, including, without restricting the generality of the foregoing, gas, electrical, telephone cables and coaxial cables, shall be installed underground from the source with pad-mounted transformers.
- 24.2 The Developer shall be responsible for providing, at its sole expense, Utility Services to each Lot and Block in accordance with the approved Plans. All Utility Services shall be installed and constructed prior to the Director of Public Works approving the Completion Certificate for Primary Services.
- 24.3 The Developer shall, prior to the Director of Public Works approving the issuance of the Completion Certificate for Primary Services, supply the Director of Public Works with "as constructed drawings" showing the location of all Utility Services required to service the Plan of Subdivision.

25. TREE PLANTINGS

- 25.1 In order to maintain a high standard of amenity and appearance, the Developer, its heirs, executors, administrators, successors and assigns hereby undertake and agree to retain the maximum number of trees within the lands consistent with good design and conservation practices and to provide tree plantings in accordance with the approved Streetscaping Plan to the satisfaction of the Director of Public Works in accordance with the following:
 - a) one (1) tree per Lot and two (2) trees per side yard flankage shall be planted in the sodded/hydroseeded portion of the street allowance between the Front Lot Line and the roadway in accordance with the Plans. Trees shall be sound, healthy, vigorous and free from disease with normally healthy root systems; and,
 - b) trees should be 50mm caliper, balled and burlapped at planting.
- 25.2 In accordance with Schedule "F" annexed hereto, prior to registration of this Agreement by the Town, the Developer shall provide security in the form of a Letter of Credit to the Town for Tree Planting within the subdivision, for the cost of replacing and maintaining trees within the Plan.

- 25.3 The Developer shall be solely responsible for acquiring and planting trees in accordance with the terms of this Agreement and in accordance with the approved Streetscaping Plan to the satisfaction of the Director of Public Works and shall deliver written notice to the Town that such work has been completed. All trees shall be planted within nine (9) months of occupancy on each respective lot.
- 25.4 The Developer shall be solely responsible for maintaining all tree plantings in a healthy state on boulevards until such time as Council passes an Assumption By-law.
- 25.5 Provided, however, that in the event the Developer does not plant trees in accordance with the provisions of this Agreement or within the prescribed time or to the complete satisfaction of the Director of Public Works, then the Town may, at its sole discretion, plant or replace or replant trees in accordance with the provisions of this Agreement and apply the above mentioned security against the Town's costs and/or collect such costs in like manner as municipal taxes.

26. LANDSCAPING

- 26.1 The Developer shall grade and place a minimum of one hundred (100) millimetres of topsoil with No. 1 nursery sod/hydroseed on all portions of road allowances in the Plan of Subdivision not covered by asphalt or sidewalks and along all sides of the Plan of Subdivision abutting on adjacent existing streets. All streetscaping shall be in accordance with the approved Plans to the satisfaction of the Director of Public Works. All sodding/hydroseeding as herein described shall be considered as part of the cost of construction of Secondary Services for the Plan of Subdivision and shall be completed at the time of or within three (3) months after the final sodding/hydroseeding of any Lot in accordance with the approved final lot grading certificate and prior to the Director of Public Works approving the Completion Certificate for Secondary Services. The Developer shall maintain all sod/hydroseed until Council passes the Assumption By-law.
- 26.2 The Developer is responsible for ensuring that each Lot or Block within the Plan of Subdivision is:
- a) fine graded in accordance with the approved individual Lot Grading Plans for each lot; and,
 - b) sodded with No. 1 nursery sod or hydroseeded within six (6) months of initial occupancy of the Building, in all areas of the Lot or Block including front yards, side yard and rear yards not covered by structure, driveway or walkway; and that all sodding/hydroseeding is maintained until it has become established.
- 26.3 All drainage ditches, major overland flow drainage swales and depressions within the Plan of Subdivision shall be fine graded and hydroseeded and landscaped in accordance with the approved plans prior to the Town issuing any building permits. Prior to and during construction, silt traps are to be put in place until vegetation is established to prevent erosion and sedimentation, to the satisfaction of the Director of Public Works.
- 26.4 Unless exempted by the Director of Public Works, all lands conveyed to the Town (including but not limited to parks, channels, and stormwater management facilities) shall be serviced, hydroseeded, and landscaped in accordance with the approved Streetscaping, and Landscaping Plans. The improvements are considered as part of the Secondary Services of the Plan of Subdivision. Once the lands have been hydroseeded and landscaped and approved by the Director of Public Works the Town will maintain the lands.

27. EROSION AND SEDIMENTATION CONTROL

- 27.1 The Developer agrees to implement the approved erosion and sedimentation and control plans and lot grading and drainage plans to the satisfaction of the

Town, Regional Municipality of Niagara, and Niagara Peninsula Conservation Authority.

- 27.2 The Developer agrees to re-vegetate or otherwise restore all disturbed areas immediately upon the completion of on-site grading to the satisfaction of the Town and the Niagara Peninsula Conservation Authority.

28. SUBDIVISION GRADING AND DRAINAGE

- 28.1 Unless otherwise approved or required by the Town, the Developer, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake not to alter the grades or remove trees or other vegetation from the Lands until such time as:
- a) the Town has agreed in writing to such alteration or removal; and,
 - b) the Town has approved the Subdivision Grading Plan pursuant to the terms of this Agreement and the Town's Lot Grading and Drainage Policy and amendments thereto; and,
 - c) prior to execution of this Agreement by the Town or commencing any phase of development, and in accordance with the Town's Lot Grading and Drainage Policy and amendments thereto, the Developer shall prepare and provide the Town, as part of the engineering drawings, a Subdivision Grading Plan for the purpose of controlling the overall drainage pattern in the Plan of Subdivision. The Subdivision Grading Plan shall be prepared in conformance with the Town's Lot Grading and Drainage Policy and amendments thereto.
- 28.2 Unless otherwise approved or required by the Town, the Developer, their heirs, executors, administrators, successors and assigns hereby irrevocably undertake not to alter the grades or remove trees or other vegetation from the Lands described in Schedule "A" until such time as the Director of Public Works has agreed in writing to such alteration or removal and the Director of Public Works has approved a Subdivision Grade Control Plan pursuant to the terms of this Agreement.
- 28.3 The following grading works shall be completed prior to the issuance of any Building Permits:
- a) construction and hydroseeding of all major overland flow drainage swales and other erosion control devices to the satisfaction of the Director of Public Works for the Plan of Subdivision, subject to weather conditions; and,
 - b) rough grading of all Lots to generally conform to the Subdivision Grading Plan.
- 28.4 If drainage problems arise which are as a result of non-compliance with the requirements of the Town's Lot Grading and Drainage Policy and amendments thereto, the Developer shall within forty-eight (48) hours of receiving notice thereof correct the problems. Without limiting its remedies at law or in equity, the Town may enter upon the Lands to remedy any such problem and may use the Subdivider's Grading Deposit to cover the costs of any remedial works deemed necessary. Any costs of these remedial works in excess of the amount of the Subdivider's Grading Deposit shall be the responsibility of the Developer, and if not reimbursed to the Town forthwith after being incurred by the Town, the Town may collect such costs in like manner as municipal taxes as provided in the *Municipal Act* and with the same priorities as taxes that are overdue and payable.
- 28.5 The Developer shall deposit with the Town as security for carrying out the provisions of the Subdivision Grading Plan, in accordance with Schedule "F" annexed hereto, a Subdivider's Grading Deposit as required by the Town's Lot Grading and Drainage Policy and amendments thereto.

- 28.6 Upon completion of the Works and acceptance by the Town of a Subdivision Grading Conformance Certificate prepared and signed by an Ontario Land Surveyor or Professional Engineer, the Developer may apply in writing for release of the Subdivider's Grading Deposit, less any cost for remedial work undertaken by the Town.
- 28.7 The Developer shall register the following covenant on all Lots and Blocks contained within the Lands described in Schedule "A" and such registration shall occur at the time of or immediately after registration of the Agreement and shall submit proof to the Town that such covenant has been registered on all the Lots and Blocks within the Subdivision:

"No one shall interfere with the drainage swales or surface drainage pattern on a lot or block without explicit written permission from the Town's Director of Public Works. All swales are for storm water management purposes and it shall be the responsibility of the Owner to maintain the drainage across the lot or block in accordance with the approved grading plan. Should the Town find it necessary to enter upon the Lands to undertake any inspection of or any Works with regard to any drainage or storm water management works, the Town shall have such rights as are prescribed by the Subdivision Agreement dated the _____ day of _____, 2023 and registered the _____ day of _____, 2023."

29. LOT GRADING AND DRAINAGE

- 29.1 Prior to the issuance of a Building Permit for a Lot or Block, the Owner or the Building Permit applicant shall submit to the Town three copies of a proposed Lot Grading Plan prepared by a Professional Engineer or an Ontario Land Surveyor and shall conform to the Subdivision Grading Plan.
- 29.2 Prior to issuance of a building permit for a Lot or Block, the Owner or the Building Permit applicant shall submit to the Town as security for carrying out the provisions of the Lot Grading Plan a Lot Grading Deposit in the amount of \$1,000.00 per Lot or Block.
- 29.3 Upon acceptance of the Grading Conformance Certificate by the Town, the Owner or the Building Permit applicant may apply in writing for release of the Lot Grading Deposit, less any cost of remedial work performed by the Town.
- 29.4 The grading of a Lot or Block shall be considered complete when the building has been erected and such Lot or Block has been graded and sodded or hydroseeded. Sodding or hydroseeding shall be done within two months after occupancy of the dwelling or by the next June 1st following occupancy should occupancy take place after November 1st.
- 29.5 Upon completion of the grading, prior to landscaping or fencing, the Developer shall submit to the Town one copy of the Lot Grading Plan which shall indicate the finished elevation as shown on the proposed Lot Grading Plan. This "as constructed" Lot Grading Plan shall be prepared and certified by a Professional Engineer or Ontario Land Surveyor.
- 29.6 Once the "as constructed" grading of a Lot has been certified and signed by an Ontario Land Surveyor or Professional Engineer to be in conformance with the latest revision of the Subdivision Grading Plan, the Lot Grading Plan if approved by the Town, shall be accepted and dated by the Town, as the "Grading Conformance Certificate."
- 29.7 The Developer, its heirs, executors, administrators, successors and assigns hereby irrevocably undertake to maintain the grading and drainage schemes as established and verified by the Grading Conformance Certificate and not to alter or revise the grading or drainage without the express written consent of the Director of Public Works or the Chief Building Official.
- 29.8 The Developer agrees that foundation drains shall be pumped by a sump pump in each house discharging via storm laterals. The Developer covenants

and warrants that foundation drains will not be connected to the sanitary sewer system.

- 29.9 The Developer agrees that roof water drainage from any structure or building shall be directed via downspouts discharging via splash pads (concrete or other suitable material) to grass surfaces. These splash pads shall extend a distance at least 1.2 metres away from the structure and must direct the flow away from the building, not onto walks or driveways, and not towards adjacent property.
- 29.10 If required, the Developer agrees to submit a plan for approval to the Director of Public Works, detailing the basement control elevations for individual dwellings or structures within the Plan of Subdivision and to ensure compliance with approved basement control elevations.

30. PRIMARY SERVICES AND COMPLETION CERTIFICATE FOR PRIMARY SERVICES

- 30.1 The Developer shall proceed with the installation or construction of the work required hereunder with all reasonable dispatch and shall complete all of the Primary Services within one (1) year after the date of the registration of the Plan of Subdivision. The Director of Public Works may extend the time for the completion of the Primary Services or any of them for such length of time as they may deem expedient upon the written application of the Developer.
- 30.2 Primary Services installation will not be considered complete by the Town until an inspection has been made by the Director of Public Works, or designate, and the Completion Certificate for Primary Services has been issued by the Director of Public Works. The Director of Public Works shall be accompanied during their inspection by the Developer's Consulting Engineer. The Works shall be inspected and all deficiencies rectified to the complete satisfaction of the Director of Public Works, prior to the approval of the Completion Certificate for Primary Services.
- 30.3 The performance by the Developer of its obligations hereunder to the satisfaction of the Director of Public Works shall be a condition precedent to the acceptance by the Town of the Works or any of them.
- 30.4 Prior to the Director of Public Works approving the Completion Certificate for Primary Services, the documentation listed in Sections 30.5, 30.6, 30.7 must be provided to the Director of Public Works in a single submission package. Only one reduction shall be permitted prior to issuance of the final completion certificate.
- 30.5 The Developer's Consulting Engineer shall provide to the Director of Public Works:
- a) certificate(s) verifying that all Primary Services were installed and constructed in accordance with approved plans and specifications;
 - b) certificate(s) stating that all water mains have been flushed, chlorinated and pressure tested in accordance with Town standards;
 - c) certificate(s) stating that all water main tracer wires have been tested and the new water distribution system can be traced;
 - d) certificate(s) stating that all fire hydrants servicing the development have been tested by a qualified hydrant testing agent;
 - e) copies of the hydrant test reports and fire flow test reports;
 - f) certificate(s) stating that all storm and sanitary sewers have been flushed after placement of base course asphalt, air pressure tested, and inspected and videoed via close circuit T.V.;
 - g) copies of the storm and sanitary sewer inspection video tape(s) and documentation;
 - h) certificate stating that the approved Tree Preservation Plan, if required, has been complied with including a Clearance Letter from the Region;

- i) certificate(s) stating that all utility services required to service the Plan of Subdivision are installed & constructed or a letter of commitment to complete the utility services from utility companies;
- j) certificate (Overall Grading Certificate) stating that rough grading and major drainage works or swales have been completed in accordance with the Subdivision Grade Control Plan;
- k) the original drawings showing each of the said works “As Constructed” together with electronic drawing files in AutoCAD format and PDF format using Town of Pelham Drafting Standards; and,
- l) plans (cards) showing the location and depth of each sanitary sewer lateral, storm sewer lateral and water service lateral constructed to service each of the Lots or Blocks.

30.6 The Developer shall provide the Director of Public Works with:

- a) a Statutory Declaration from the Developer in a form satisfactory to the Director of Public Works setting out the Works completed and verifying:
 - 1. all such works have been completed in accordance with the terms of this Agreement and the approved plan and specifications;
 - 2. all accounts have been paid for installation, construction, inspection, repair and maintenance of such Works; and,
 - 3. that there are no outstanding debts, claims, or liens in respect of such works.

30.7 The Developer shall provide the Town with the Maintenance Guarantee, as required by Section 38 hereof.

30.8 Subject to Sections 30.5, 30.6, 30.7 hereof, upon receipt of the required documentation and the Director of Public Works’ satisfaction that the installation and construction of all Primary Services related to Town land has been completed in accordance with this Agreement and approved Plans, the Director of Public Works, shall date and approve the Completion Certificate for Primary Services.

31. SECONDARY SERVICES AND COMPLETION CERTIFICATE FOR SECONDARY SERVICES

31.1 With the exception of the asphalt surface course and the sodding/hydroseeding required by Sections 26.1 and 26.2, all Secondary Services, including hydroseeding and landscaping required by Sections 26.3 and 26.4, shall be completed within eighteen (18) months after the date of the registration of the Plan of Subdivision. The Director of Public Works may extend the time for completion of the Secondary Services or any of them for such length of time as they may deem necessary upon the written application of the Developer.

31.2 The final asphalt surface course shall be completed no sooner than twenty-four (24) months and no later than thirty-six (36) months after issuance of the Completion Certificate for Primary Services or as directed by the Director of Public Works.

31.3 Secondary Services installation will not be considered complete by the Town until an inspection has been made by the Director of Public Works or designate and the Completion Certificate for Secondary Services has been issued by the Director of Public Works. The Director of Public Works shall be accompanied during their inspection by the Developer’s Consulting Engineer. The Works shall have been inspected and all deficiencies rectified to the complete satisfaction of the Director of Public Works, prior to the approval of the Completion Certificate for Secondary Services.

- 31.4 The Town may withhold approval of a Completion Certificate if, in the sole opinion of the Director of Public Works, the Developer is in default of its obligations pursuant to this Agreement or the approved Plans.
- 31.5 Prior to the Director of Public Works approving the Completion Certificate for Secondary Services, the documentation listed in Sections 31.5 and 31.6 must be provided to the Director of Public Works in a single submission package. Only one reduction shall be permitted prior to issuance of the final completion certificate.
- The Developer's Consulting Engineer shall provide to the Director of Public Works:
- a) certificate(s) verifying that all secondary services have been installed, fully completed, repaired and maintained in accordance with approved plans and specifications; and,
 - b) if required, the original Drawings showing each of the said works" as constructed" together with electronic drawing files in AutoCAD format and PDF format using Town of Pelham Drafting Standards.
- 31.6 The Developer shall provide the Director of Public Works with a Statutory Declaration from the Developer in a form satisfactory to the Director of Public Works setting out the Works completed and verifying:
- a) all such works have been completed in accordance with the terms of this Agreement and the approved plan and specifications;
 - b) all accounts have been paid for installation, construction, inspection, repair and maintenance of such Works; and,
 - c) that there are no outstanding debts, claims or liens in respect of such works.
- 31.7 Subject to Sections 31.5 and 31.6 hereof, upon receipt of the required documentation and the Director of Public Works' satisfaction that the installation and construction of all Secondary Services has been completed in accordance with this Agreement and approved Plans, the Director of Public Works shall date and approve the Completion Certificate for Secondary Services.

32. MAINTENANCE OF THE SUBDIVISION

- 32.1 Until the Town issues the Final Certificate of Completion of Services, the Town agrees to provide only snow plowing and sanding services on paved roads connected by paved road to a public roadway. The Developer shall provide all other services including, but not limited to, maintenance and repairs of sewers, water mains and appurtenances, storm water management facility, fencing (including silt fencing and control structures) and overland drainage systems. The Developer agrees that any service provided by the Town prior to actual acceptance of the roads by the Town shall not be deemed acceptance of the roads.
- 32.2 The Developer shall, at its own expense and to the satisfaction of the Director of Public Works, repair and maintain all Primary Services and other private services herein required to be installed or constructed for a minimum period of two (2) years from the date of issuance of the Completion Certificate of Primary Services or until the date of issuance of the Final Certificate of Completion of Services, whichever is later.
- 32.3 The Developer shall guarantee all Secondary Services including any repairs and maintenance performed by it pursuant to Section 32.2 or by the Town pursuant to Section 11.1 for a minimum period of twelve (12) months from the date of completion of said services, notwithstanding that the two (2) year period of maintenance provided under Section 32.2 may have elapsed.
- 32.4 The Developer shall be responsible for the general tidy appearance of the entire Lands until completion of all building, and carry out all weed cutting and

maintenance on all unsold lands and all unassumed roads to the satisfaction of the Director of Public Works.

- 32.5 The Developer shall adequately maintain all roads, sidewalks and pedestrian walkways within the Plan of Subdivision free from mud, debris, building materials, and other obstructions, to the satisfaction of the Director of Public Works until Council passes an Assumption By-Law.
- 32.6 The Developer shall be responsible to control weeds and to maintain vacant lands free from debris, waste building materials, tree stumps, discarded boulders, and other refuse, and shall notify any purchaser, in writing, to refrain from dumping on such vacant lands, including lands dedicated by it to the Town for municipal purposes.
- 32.7 Should the Developer, for any reason, fail to carry out the repairs or maintenance, including weed control, when requested by the Town, the Director of Public Works, at their sole option, after giving the Developer twelve (12) hours written notice, may perform the repairs or maintenance and all costs, charges and expenses so incurred shall be borne by the Developer. The decision of the Director of Public Works shall be final as to the necessity of repairs or of any work done or required to be done. Any costs incurred by the Town not reimbursed by the Developer forthwith may be collected by the Town in like manner as municipal taxes as provided in the *Municipal Act* and with the same priorities as taxes that are overdue and payable.
- 32.8 The Developer's obligation to maintain the Works as aforesaid shall commence on the approval date of the Final Certificate of Completion of Services and extend for a minimum of one (1) year or until the Director of Public Works approves the Final Certificate of Completion of Services whichever occurs last (this period is herein referred to as the "Maintenance Guarantee Period").
- 32.9 The Maintenance Guarantee Period for Primary Services shall commence on the date the Director of Public Works approves the Completion Certificate for Primary Services. The Developer shall, at its own expense and to the satisfaction of the Director of Public Works, repair and maintain all Primary Services and other private services herein required to be installed or constructed for a minimum period of two (2) years from the date of issuance of the Completion Certificate for Primary Services or until the date of issuance of the Final Certificate of Completion of Services, whichever is later.
- 32.10 The Maintenance Guarantee Period for Secondary Services shall commence on the date the Director of Public Works approves the Completion Certificate for Secondary Services. The Developer shall guarantee all Secondary Services including any repairs and maintenance performed by it pursuant to Section 32.2 or by the Town pursuant to Section 11.1 for a minimum period of twelve (12) months from the date of completion of the said services, notwithstanding that the three (3) year period of maintenance provided under Section 32.2 may have elapsed.

33. CERTIFICATE OF FINAL ACCEPTANCE

- 33.1 After the expiry of the maintenance period provided for in Section 32.3 hereof, the Town shall, subject to the compliance by the Developer with Section 33.3 hereof, issue a Final Certificate of Completion of Services upon written application by the Developer provided, however, that the Town may withhold the issuance of the Final Certificate of Completion of Services if, in the sole opinion of the Director of Public Works, the Developer is in default of its obligations to repair, construct or maintain any of the Works pursuant to this Agreement. Upon expiration of the three year Maintenance Guarantee Period for Primary Services or the one year Maintenance Guarantee Period for Secondary Services and upon receipt of written application by the Developer, the applicable Works will be inspected by the Director of Public Works, and provided all deficiencies have been rectified to his satisfaction and the Developer is not in default of the terms of this Agreement, the subject Works shall be accepted by the Town and the Director of Public Works shall approve the Certificate of Final Acceptance prepared by the Developer's Consulting

Engineer provided the requirements of the Certificate of Final Acceptance have been met.

- 33.2 The Developer is required to submit a certificate from a registered Ontario Land Surveyor certifying they have found and/or replaced all standard iron bars (SIB's) shown on the registered Plan of Subdivision as of a date not earlier than seven days prior to the Director of Public Works approving the Certificate of Final Acceptance for Secondary Services.
- 33.3 The application, in writing, by the Developer for the Final Certificate of Completion of Services shall include the following:
- a) a statutory declaration in a form satisfactory to the Director of Public Works that all accounts for the installation, construction and maintenance of all the Works required to be installed or constructed hereunder have been paid and that there are no outstanding debts, claims or liens in respect of the Works of any of them; and,
 - b) a Certificate in a format acceptable to the Director of Public Works signed by the Developer's Consulting Engineer certifying that all the Works including any repairs and deficiencies have been fully completed, inspected, tested and maintained in accordance with the provisions hereof and the standards and specifications of the Town and the Plans as approved by the Director of Public Works.
- 33.4 If upon inspection of the Works all deficiencies have not been rectified to the complete satisfaction of the Director of Public Works, the Maintenance Guarantee Period shall be extended until such time as all deficiencies have been rectified and the Certificate of Final Acceptance has been approved by the Director of Public Works.
- 33.5 The Director of Public Works may withhold approval of a Certificate of Final Acceptance for Primary or Secondary Services, if, in the sole opinion of the Director of Public Works, the Developer is in default of its obligations to inspect, repair, construct, or maintain any of the Works pursuant to this Agreement and the approved Plans.
- 33.6 The issuance by the Town of the Final Certificate of Completion of Secondary Services may be withheld until eighty-five percent (85%) of the Lots have been built upon with Buildings completed to the *Building Code Act* occupancy requirements and the final grading certificates for the Lots have been approved by the Director of Public Works.
- 33.7 Upon the issuance of the Final Certificate of Completion of Primary and Secondary Services, the Director of Public Works shall recommend to Council that the Town assume by By-law the Primary and Secondary Services within the Plan of Subdivision as required to be constructed or installed under this Agreement.

34. ASSUMPTION OF MUNICIPAL SERVICES

The Developer hereby acknowledges that upon assumption by the Town of the municipal services required to be installed and constructed by this Agreement and the approved Plans, all such municipal services shall wholly vest in the Town without payment therefor, free and clear of all claims and liens and the Developer shall have no right, title or interest therein. Municipal services shall be assumed by the Town by Council passing an Assumption By-law after the Director of Public Works approves the Certificate of Final Acceptance for Primary Services and the Certificate of Final Acceptance for Secondary Services.

35. BUILDING PERMITS AND OCCUPANCY

- 35.1 The Developer/Owner covenants and agrees not to apply for building permits until:
- a) all Primary Services (including roadways to base asphalt and curbs) have been completed and are operational and a Completion Certificate

for Primary Services has been approved to the satisfaction of the Director of Public Works;

- b) the Town has on file an approved Subdivision Grading Plan;
- c) the Developer has completed the following grading works:
 - i) rough grading of all Lots and Blocks to generally conform to the Subdivision Grading Plan;
 - ii) construction and hydroseeding of all major overland flow drainage swales and other erosion control devices deemed necessary by the Town for the Lands;
- d) the Town has on file an approved Proposed Lot Grading Plan;
- e) the Town is in receipt of all applicable fees and deposits including, without limiting the generality of the foregoing:
 - i) development fees at the prevailing rate as prescribed by the Town's Development Charges By-Law 4023 (2018) and amendments thereto;
 - ii) the Lot Grading Deposit;
 - iii) Building Permit application fee;
 - iv) Plumbing Permit application fee;
 - v) water meter fee;
 - vi) service main connection application and fee, if applicable; and,
 - vii) any other fees, deposits or payments required under this Agreement or as otherwise provided for under any other executed agreement between the Town and the Developer;
- f) the Town's Fire Department has confirmed that an adequate water supply for firefighting operations and satisfactory access for firefighting equipment is available to service the Lands;
- g) the Town is satisfied all terms and conditions of this Agreement have been complied with insofar as they apply at that point in time;
- h) the Developer/Owner has paid or otherwise satisfied all development charges required by the Development Charges By-Law of the Town of Pelham, and the Development Charges By-Law of the Regional Municipality of Niagara, and the Development Charge of the Niagara District Catholic School Board; and,
- i) the Developer/Owner has otherwise complied with all applicable law.

35.2 The Developer/Owner agrees to comply with Policy B1.1.13.3 *Built Form* of the Official Plan and retain the services of a Design Architect. The submission of building permit applications shall include the building's licensed Architect/Designer stamp and a statement on the submitted plans that they comply with Policy B1.1.13.3.

35.3 Notwithstanding anything herein contained, the Town may refuse to issue building permits if there is an existing default in any of the provisions of this Agreement.

35.4 Prior to making any connections, if required, to existing municipal services the Developer/Owner shall submit to the Town, completed Connection Permit applications and applicable fees for connection to existing sewer or water

mains. No connection shall be made until the Connection Permits are approved by the Town's Public Works Department.

- 35.5 The Developer acknowledges and confirms that all charges, payments, Works to be constructed or installed, studies to be carried out and all other obligations contained in this Agreement or the cost thereof (except where a charge is referred to herein as "a development charge" are characterized as:
- a) services installed or provided at the expense of the Developer within the Plan of Subdivision, as a condition of approval under Section 51 of the *Planning Act*; or
 - b) services denoted on approved Plans or specifically noted in the Agreement for which the Developer is making no claim for credits under the Development Charge By-law except as otherwise provided for under other agreements between the Town and the Developer; and,
 - c) are not charges related to development within the meaning of the *Development Charges Act, 1997* except as otherwise provided for under other agreements between the Town and the Developer.
- 35.6 Except as otherwise provided for under other agreements between the Town and the Developer, the Developer hereby releases and forever discharges the Town from any and all claims for credit against development charges payable hereunder or payable at the issuance of a building permit or permits for construction within the Plan of Subdivision and the Developer hereby waives all such claims for credits except for the credits that may be specified in any schedule forming part of this Agreement. Any such credits so specified herein and the calculation thereof shall be deemed to be conclusive and binding on the Developer.
- 35.7 The Developer/Owner may construct 20 model units once the following Primary Services are completed: roads (base coat asphalt), watermain, and sanitary sewers.
- 35.8 Unless otherwise determined by the Chief Building Official, no dwelling, including model units, shall be occupied:
- a) until the Director of Public Works has approved the Completion Certificate for Primary Services;
 - b) until the Town has on file a Grading Conformance Certificate for the Lot; and,
 - c) until a final inspection has been completed and a Letter of Occupancy is issued by the Chief Building Official.
- 35.9 The Developer/Owner agrees to pay all applicable permit fees and unless otherwise satisfied pursuant to the terms of other agreements between the Town and the Developer, any development charges for the buildings or structures constructed as model units, and shall otherwise comply with Section 35 herein, prior to a Letter of Occupancy being issued for said units.
- 35.10 All new homes constructed shall be equipped with water meters at the sole expense of the Developer/Owner.

36. TENDERS, INSURANCE, AND BONDING

- 36.1 If required by the Town, the Developer shall call for tenders for the Works in accordance with the Town's Procurement Policy. Where the Town requires the Developer to call for tenders, any tender proposed to be accepted by the Developer shall not be accepted until same has been approved in writing by the Director of Public Works.
- 36.2 Prior to commencement of any Works, the Developer shall, at its own expense, provide the Town with:

- a) a certified copy of the Developer's third party All Perils and Liability Insurance Policy naming the Town as an additional insured in a form satisfactory to the Town as follows:
 - (i) a limit of liability of not less than five million dollars (\$5,000,000.00) or such greater amount as the Director of Public Works deems advisable;
 - (ii) inclusion of the Town, its agents and servants and the Regional Municipality of Niagara as additional named insureds;
 - (iii) a provision for cross liability in respect of the named insureds;
 - (iv) non-owned automobile coverage with a limit of at least five million dollars (\$5,000,000.00) including contractual non-owned coverage;
 - (v) completed operations coverage;
 - (vi) that sixty (60) days prior notice, of any alteration, cancellation or change in policy terms which reduces coverage, shall be given in writing to the Town; and
 - (vii) owner's protective coverage.
- b) a Certificate from the Worker's Safety Insurance Board certifying the contractor is in good standing with the Board; and,
- c) satisfactory evidence the contractor is qualified, experienced and has the equipment to successfully complete the Works.

37. SECURITY DEPOSITS AND REFUNDS

Security Deposits

- 37.1 The Developer shall be responsible for the full amount of the cost for the design, construction, installation, servicing and maintenance of the Works for the Plan of Subdivision together with all Town inspection charges, administrative and consulting fees, engineering and legal costs and in order to guarantee compliance with all conditions contained herein, the Developer shall be required to post security and cash payments, in a form satisfactory to the Town, on accounts of aforesaid costs, charges and fees in accordance with Schedule "F" annexed hereto prior to execution of this Agreement by the Town. The security should be in the form of a standby Letter or Letters of Credit with **automatic renewal provision**, in a form approved by the Town. The Developer covenants and agrees that the Letter of Credit shall be kept in full force and effect and that it will pay all premiums as the Letter of Credit becomes due or until such time as the Town returns the Letter of Credit in accordance with the provisions of this agreement.
- 37.2 The Developer acknowledges and agrees that should there be a deficiency in or failure to carry out any work or matter required by any provision of this Agreement, whether or not such work or matter is specifically secured by way of Letter of Credit, and the Developer fails to comply within seven (7) days of being given written notice with a direction to carry out such work or matter, the Town may draw on the Letter of Credit and enter onto the Lands and complete all outstanding works or matters, and pay all costs and expenses incurred thereby from the proceeds so drawn.
- 37.3 The Developer acknowledges and agrees that the Town reserves the right to draw on and use the proceeds from the Letters of Credit to complete any work or matter required to be done by the Developer pursuant to this Agreement. The Developer further acknowledges and agrees that, notwithstanding any provision to the contrary in this Agreement specifying the reduction or release of security, in the event that the Town determines that any reduction in the

Letter of Credit would create a shortfall with respect to securing the completion of any work or matter remaining to be carried out by the Developer pursuant to this Agreement, the Town will not be obligated to reduce or release the Letter of Credit as by the particular provision until such time as such work is satisfactorily completed, or the Town has sufficient security to ensure that such work will be completed.

- 37.4 Whenever in this Agreement a Letter of Credit is required to be filed with the Town, the Developer may instead deposit cash or a certified cheque to be cashed in an amount equal to the Letter of Credit and such deposit shall be held by the Town as security in accordance with this Agreement provided that no interest shall be payable on any such deposit.
- 37.5 The Developer acknowledges that upon the transfer of any ownership of the Lands, the Town will not return any Letters of Credit or cash deposit required under this Agreement until the new Developer files a substitute Letter or Letters of Credit or cash or certified cheque in the required amounts with the Town.
- 37.6 The Developer acknowledges that for the purpose of determining the amount of security to be posted prior to execution, the Developer's Engineer shall provide the Town with an estimate of the cost of design, construction, supervision, inspection and maintenance of all Works. Security to be posted for Primary Services and Secondary Services and to cover Town inspection charges, engineering, administrative, legal, and consulting fees shall be calculated, in a manner satisfactory to the Director of Public Works, on the basis of the Developer's Engineer's estimated cost of design, construction, supervision, inspection and maintenance of all Works as set out in Schedule "F" annexed hereto. If in the opinion of the Town the cost estimate does not reflect current costs, the Town reserves the right to modify the estimate.
- 37.7 From time to time, upon written request, the Developer's Engineer shall be required to certify in writing the actual cost of design, construction and maintenance of all Works installed and constructed to date, and the estimated cost of all outstanding Works, and the Director of Public Works may adjust the amount of security required if the actual cost of construction of all Works, installed and constructed to date or the estimated cost of all outstanding Works exceeds the original estimated costs as set out in Schedule "F" annexed hereto by twenty percent (20%) of the original estimates or tender costs and the Developer shall be required to obtain, and the Developer hereby covenants to obtain, an amendment to the security to give effect thereto. In the event the Developer fails to increase the amount of security within fourteen (14) days of receipt of aforesaid written notice, then the Developer shall be deemed to be in Final Default of the terms and conditions of this Agreement.

Cash Payments

- 37.8 Prior to the execution of this Agreement by the Town, as security for payment of services to be rendered by the Town and its agents as required by this Agreement, and for presently outstanding payments owing to the Town, the Developer shall, in accordance with Schedule "F" annexed hereto, deposit with the Town cash payment and cash security as set out in Schedule "F", which security shall include, but not be limited to the following:
- a) a cash amount to secure the Town's engineering, administrative consulting and legal costs for this Agreement, approval of the Plans, and enactment of by-laws in accordance with the Town's applicable Fees and Charges By-law.
 - b) a cash amount to cover the Town's cost to supply and install street name and traffic control signage at the rate of five hundred dollars (\$500.00) per sign; and
 - c) a cash amount to cover all arrears of taxes and all current taxes and all local improvement charges assessed against the Lands described in Schedule "A" annexed hereto.

Letters of Credit

37.9 Before commencing any of the Works provided for in this Agreement, the Developer will deposit with the Town a Letter of Credit drawn upon a chartered bank in favour of the Town and in a form satisfactory to the Treasurer, in an amount approved by the Director of Public Works and/or Director of Community Planning and Development, which Letter of Credit shall be sufficient to guarantee the satisfactory completion of the Works or any portion of the Works as established by the Town in its sole discretion, and payments or any part thereof required to be made by this Agreement, and will, without restricting the generality of the foregoing, guarantee the following:

- (1) payment of twenty percent (20%) of the approved estimated costs of the construction of the Primary Services to service the Lands, plus one hundred and twenty percent (120%) of the approved estimated construction costs of the Secondary Services upon the Lands as shown in Schedule "F" annexed hereto; and,
- (2) payment of one hundred percent (100%) of any other payments or Works as may be required of the Developer by the Town pursuant to this Agreement.

37.10 The amount of the Letter of Credit required hereunder shall not be reduced unless all of the conditions of this Agreement are complied with and the estimated costs of rectifying any outstanding deficiencies, as estimated in the sole discretion of the Director of Public Works, plus one hundred and twenty percent (120%) of the estimated costs of the completion of all outstanding Primary Services and Secondary Services plus all other outstanding costs payable under this Agreement, plus the Maintenance Guarantee as required under Section 38 of this Agreement, plus any *Construction Lien Act* requirements are all, in total, less than the amount of the Letter of Credit held by the Town. In such an instance, the amount of the Letter of Credit may, at the sole discretion of the Director of Public Works be reduced to an amount equal to the total of all amounts set out above. Only one reduction shall be permitted prior to issuance of the final completion certificate. Such reduction shall be based on the following:

- (1) progress certificates from the Developer's Consulting Engineer setting forth the cost of the Works completed and paid to date and the cost of unfinished Works;
- (2) a request for reduction in the amount of the Letter of Credit in a form approved by the Director of Public Works and/or Director of Community Planning and Development; and,
- (3) proof of payment in a form satisfactory to the Director of Public Works and/or Director of Community Planning and Development of the amounts paid on account of the completed Works to the date of the application for reduction.

37.11 Notwithstanding anything herein contained, the amount of the Letter of Credit shall at all times be sufficient to cover the balance of the costs of the completion of the unfinished Works, including Works deferred for extended periods and the requirements of the *Construction Lien Act*.

37.12 The Developer shall pay the cost of the Works and the fees of the Developer's Consulting Engineer and the Ontario Land Surveyor.

38. MAINTENANCE GUARANTEE

38.1 The Letter of Credit deposited by the Developer pursuant to Section 37 hereof may, upon the completion of the Primary Services, and prior to the assumption of the Works by the Town, at the Director of Public Works discretion, be reduced to an amount equal to ten percent (10%) of the completed Works (Schedule "F") plus one hundred and twenty per cent (120%) of the value, as

estimated by the Director of Public Works, of any uncompleted Works and such Letter of Credit shall be retained by the Town as a Maintenance Guarantee to guarantee the workmanship and materials of the Works until such time as the maintenance guarantee periods as provided for in Sections 32.2 and 32.3 have both expired.

- 38.2 The Letter of Credit may be realized upon by the Town if the Developer defaults in any payment or condition contained herein.
- 38.3 The Developer shall be conclusively deemed to be in breach of the covenant if, in the case of the cost of the Works or the fees of the Owner's/Developer's Consulting Engineer and the Ontario Land Surveyor, a lien against the Lands or any part thereof is preserved pursuant to the *Construction Lien Act* and if, in the case of any other payment required to be made under this Agreement, a notice to that effect is forwarded to the Developer by the Director of Public Works in accordance with Section 39.2 hereof.

39. DEFAULT

- 39.1 Upon breach by the Developer of any covenant, term, condition or requirement of this Agreement, or upon the Developer becoming insolvent or making an assignment for the benefit of creditors, the Town, at its option, may declare that the Developer is in default.
- 39.2 Notice of such default ("Notice of Default") shall be given by the Town and if the Developer does not remedy such default within such time as provided in the notice, the Town may declare that the Developer is in final default under this Agreement and shall then forthwith give notice of final default ("Notice of Final Default") thereof to the Developer.
- 39.3 Upon Notice of Default having been given, the Town may require all work by the Developer, their servants, agents, independent contractors, and sub-contractors to cease (other than any work necessary to remedy such default) until such default has been remedied and in the event of final default, may require all work as aforesaid to cease.
- 39.4 Upon Notice of Final Default having been given to the Developer, the Town may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:
- a) enter upon the Lands shown on the Plan of Subdivision by its servants, agents and contractors and complete any work, services repairs or maintenance wholly or in part required herein to be done by the Developer and collect the cost thereof from the Developer and/or enforce any security available to it;
 - b) make any payment which ought to have been made by the Developer and upon demand collect the amount thereof from the Developer and/or enforce any security available to it;
 - c) retain any sum of money heretofore paid by the Developer to the Town for any purpose and apply the same in payment or part payment for any work which the Town may undertake;
 - d) assume any work or services at its option, whether the same are completed or not, and thereafter the Developer shall have no claim or title hereto or remuneration therefore;
 - e) bring action to compel specific performance of all or any part of this Agreement or for damages;
 - f) add any costs incurred by the Town to the tax collector's roll for the Lands and collect such costs by action or in like manner as municipal real property taxes; or,
 - g) exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

39.5 Developer shall be deemed to be in Final Default if:

- a) the Town receives written notice from the Bank of its intension to not renew the Letter of Credit;
- b) the Developer has not made provision for renewal at least thirty (30) days prior to the date of maturity of any Letter of Credit posted;
- c) the Town receives written notice from the insurance company or the Developer's agent that any insurance policy filed by the Developer with the Town is being altered, cancelled, or allowed to lapse;
- d) the Developer has not made provision for renewal at least thirty (20) days prior to the date of expiry of any insurance policy, Performance and Maintenance Bond, or Labour and Material Payment Bond;
- e) upon sale of the Lands the new Developer has not delivered to the Town, replacement security deposits; or,
- f) the Developer fails to increase security as required by the provisions of this Agreement.

40. INDEMNIFICATION

Until the Town passes a By-law assuming the Streets shown on the Plan, the Developer, on behalf of itself, its successors and assigns, including its successors in title of the Lands in the Plans of Subdivision, hereby releases and discharges and indemnifies the Town from and against all actions, causes of action, suits, claims and demands whatsoever which may arise by reason of:

- a) any alteration of the existing grade or level of any Street or Streets on the Plan to bring the said grade or level in conformity with the grade or level required by the Director of Public Works; and,
- b) any damage to the Lands abutting on any Street or Streets shown on the Plan or to any Building erected thereon arising from or in consequence of any such alteration of grade or level; and,
- c) any damages or injuries (including death) to persons or damage to property occurring or arising on any Street or Streets on the Plan however caused.

41. COVENANTS THAT RUN WITH THE LAND

The Developer and the Town acknowledge and agree that it is their intent that all the terms, conditions and covenants contained herein shall be covenants that run with the land and that the burden of such covenants shall be binding upon the Developer, their successors and assigns, and successors in title, from time to time, of the Lands described in Schedule "A" of this Agreement and any part or parts thereof and that the benefits of the said covenants shall enure to the Town, its successors and assigns in title of all roads, Streets and public lands forming part of or abutting on the Lands described in Schedule "A".

42. NOTICE

All notices required or permitted to be given by one party to the other shall be given in writing either by prepaid registered mail or delivered personally addressed, in the case of the Town to:

Town of Pelham
20 Pelham Town Square
P.O. Box 400
Fonthill, ON L0S 1E0

and in the case of the Developer to:

Lally Homes Ltd.

or at such other addresses as may be given by either of them to the other in writing from time to time, and such notices shall be deemed to have been received, if mailed, on the third day following that on which it was so mailed and if delivered, on the day of such delivery.

43. SCHEDULES

The Schedules annexed hereto, being Schedules “A” to “I” inclusive, are a part of this Agreement. All Schedules are to be interpreted as if the contents thereof were included in the Agreement.

44. SPECIAL PROVISIONS

The Developer shall undertake and complete all other special provisions to this Agreement, as outlined in Schedule "H" which forms part of this Agreement.

45. NUMBER AND GENDER

In this Agreement, unless there is something in the subject-matter or context inconsistent therewith:

- a) Words in the singular number include the plural and such words shall be construed as if the plural had been used;
- b) Words in the plural include the singular and such words shall be construed as if the singular had been used; and,
- d) Words importing the use of any gender shall include all genders where the context or party referred to so requires, and the rest of the sentence shall be construed as if the necessary grammatical and terminological changes had been made.

46. BINDING EFFECT

This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Parties hereto and upon those persons and/or corporations hereafter acquiring title to all or any part of the Lands.

IN WITNESS WHEREOF THE Parties hereto have executed this Agreement as of the date and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

) LALLY HOMES LTD.
)
)
) Print Name: _____
)
)
) Signature: _____
)
) ☐ I have authority to bind the Corporation.
)
)
) THE CORPORATION OF THE TOWN OF
) PELHAM
)
)
)
) _____
) Marvin Junkin, Mayor
)
)
) _____

) William Tigert, Acting Clerk

SCHEDULE "A"

LEGAL DESCRIPTION

Part Lot 3, Concession 9, Part 1, Plan 59R-17613; Town Of Pelham, Regional Municipality of Niagara; Subject to an Easement in Gross as in SN743866.

SCHEDULE "B"

LANDS CONVEYED FOR PUBLIC PURPOSES

All references to Blocks and Lots relate to 59M-_____.

The Developer shall convey free and clear of all encumbrances and at its own expense the following lands to The Corporation of the Town of Pelham:

1. Blocks 13-17 for 0.3 metre reserve.

SCHEDULE "C"

REQUIRED MUNICIPAL EASEMENTS

All references to Parts, Blocks, and Lots relate to 59R- _____.

The Developer shall convey free and clear of all encumbrances and at its own expense, an easement to The Corporation of the Town of Pelham; over, under and through:

1. Part 1, part of Lot 3, for storm water purposes
2. Part 2, part of Lot 4, for storm water purposes
3. Part 3, part of Lot 5, for storm water purposes
4. Part 4, part of Lot 6, for storm water purposes
5. Part 5, part of Lot 7, for storm water purposes

SCHEDULE "D"

REQUIRED UTILITY EASEMENTS

All references to Parts, Blocks, and Lots relate to 59R- _____.

The Developer shall convey free and clear of all encumbrances and at its own expense, an easement to utilities over, under and through:

1. Part 8, part of Block 8, for utility purposes
2. Part 9, part of Block 9, for utility purposes

SCHEDULE "E"

LIST OF APPROVED DRAWINGS

1. Emerald Trails Subdivision Removals Plan, prepared by Urban & Environmental Management Inc., dated September 1, 2021 and revised to January 9, 2023, as Drawing No. 01, or the latest revision thereof.
2. Emerald Trails Subdivision General Plan of Services, prepared by Urban & Environmental Management Inc., dated September 1, 2021 and revised to January 9, 2023, as Drawing No. 02, or the latest revision thereof.
3. Emerald Trails Subdivision Street B (West Leg) and Street A STA 1+160 to STA 1+310, prepared by Urban & Environmental Management Inc., dated September 1, 2021 and revised to January 9, 2023, as Drawing No. 03, or the latest revision thereof.
4. Emerald Trails Subdivision Street B STA 1+000 to STA 1+160, prepared by Urban & Environmental Management Inc., dated September 1, 2021 and revised to January 9, 2023, as Drawing No. 04, or the latest revision thereof.
5. Emerald Trails Subdivision Street C (Entrance) STA 0+000 to STA 0+067.3, prepared by Urban & Environmental Management Inc., dated September 1, 2021 and revised to January 9, 2023, as Drawing No. 05, or the latest revision thereof.
6. Emerald Trails Subdivision General Lot Grading Plan, prepared by Urban & Environmental Management Inc., dated September 1, 2021 and revised to January 9, 2023, as Drawing No. 06, or the latest revision thereof.
7. Emerald Trails Subdivision Erosion and Sediment Control Plan, prepared by Urban & Environmental Management Inc., dated September 1, 2021 and revised to January 9, 2023, as Drawing No. 07, or the latest revision thereof.
8. Emerald Trails Subdivision Typical Road Crossing Sections, prepared by Urban & Environmental Management Inc., dated September 1, 2021 and revised to January 9, 2023, as Drawing No. 08, or the latest revision thereof.
9. Emerald Trails Subdivision Details – Lot Grading, prepared by Urban & Environmental Management Inc., dated September 1, 2021 and revised to January 9, 2023, as Drawing No. 09, or the latest revision thereof.
10. Emerald Trails Subdivision Details, Notes and Legend, prepared by Urban & Environmental Management Inc., dated September 1, 2021 and revised to January 9, 2023, as Drawing No. 10, or the latest revision thereof.
11. Emerald Trails Subdivision Storm Drainage Area Plan, prepared by Urban & Environmental Management Inc., dated September 1, 2021 and revised to January 9, 2023, as Drawing No. STM, or the latest revision thereof.
12. Emerald Trails Subdivision Sanitary Drainage Area Plan, prepared by Urban & Environmental Management Inc., dated September 1, 2021 and revised to January 9, 2023, as Drawing No. SAN, or the latest revision thereof.
13. E

SCHEDULE "F"

FINANCIAL OBLIGATIONS AND COST OF CONSTRUCTION

PRIMARY SERVICES				
General clearing, topsoil stripping and earthworks			\$46 369.00	
Roads			\$454 752.00	
Sanitary Sewer			\$154 448.00	
Storm Sewer			\$554 516.00	
Water			\$207 050.00	
Street lights			\$90 000.00	
50% of Parking Lot Construction			\$60 814.00	
50% of Parking Lot Lighting			\$15 000.00	
Subtotal for Primary Security Purposes			\$1 582 949.00	
Contingencies (5%)			\$79 147.45	
Engineering (10%)			\$158 294.90	
Subtotal Primary Servicing, Engineering and Contingency			\$1 820 391.35	
TOTAL PRIMARY SERVICES COST			\$1 820 391.35	
Letter of Credit for Primary Services (20%)			\$364 078.27	(1)
SECONDARY SERVICES				
Final Roads			\$148 886.00	
Subtotal for Secondary Security Purposes			\$148 886.00	
Contingencies (5%)			\$7 444.30	
Engineering (10%)			\$14 888.60	
Subtotal Secondary Servicing, Engineering and Contingency			\$171 218.90	
TOTAL SECONDARY SERVICES COST			\$171 218.90	
Letter of Credit for Secondary Services (120%)			\$205 462.68	(2)
TOWN FEES				
Town Administration Fee- Subdivision Agreement Fee			\$80 819.36	(3)
Coniferous Trees to be Planted in the Park to satisfy Condition 47 (special provision 17)	10	Each \$525	\$5 250.00	(4)
Street Signs	8	each \$500	\$4 000.00	(5)
Traffic Signs- stop signs	2	each \$500	\$1 000.00	(6)
Regulatory/Warning Signs	2	each \$500	\$1 000.00	(7)
SUMMARY			\$92 069.36	
LETTER OF CREDIT REQUIRED (1)+ (2)			\$569 540.95	
CASH PAYMENT REQUIRED (3) + (4) + (5) + (6) + (7)			\$92 069.36	

SCHEDULE "G"

SPECIAL PROVISIONS

1. All references to Lots and Blocks in this Agreement are to be the Plan of Subdivision (59M - _____) and all references to Easements in this Agreement are to be the Compiled Easement Plan (59R- _____).
2. The Developer acknowledges and agrees to insert into all offers and agreements of purchase and sale the following clause:

"All Works within the Subdivision, including but not limited to storm sewers, sanitary sewers, watermain, roads, curbs and gutters, street lighting and drainage works and swales, are contracted by the Developer. The Developer is obligated to maintain the Works in accordance with the Agreement and Plans registered on title."
3. The Developer acknowledges and agrees to insert into all offers and agreements of purchase and sale the following clause:

"The lands in the Subdivision are subject to the payment of development charges which are payable prior to the issuance of a building permit."
4. The Developer acknowledges and agrees to insert into all offers and agreements of purchase and sale the following clause:

"All building roof downspouts and sump pump discharge within this subdivision shall discharge only to ground surface via splash pads to either side or rear yards, with no direct connection to the storm sewer or discharge directed to the driveway or roadway."
5. The Developer acknowledges and agrees to insert into all offers and agreements of purchase and sale the following clause:

"Public sidewalk construction at the Developer's expense shall be in accordance with the terms of the Subdivision Agreement and the approved plans on file at the Town."
6. The Developer acknowledges and agrees that all offers and agreements of purchase and sale the following clause:

"The Developer shall be responsible for installing paved driveway aprons (maximum 6.0m wide) from curb to the property line or from the curb to the sidewalk within municipal road allowances."
7. The following warning clause regarding all the lots within the subdivision shall hereby be registered on title to the lands:

"All persons intending to acquire an interest in the real property by purchase or lease on this development are advised of the presence of a storm water management facility which will be subject to storm water flows and periodic flooding due to seasonal rainfall and snowmelt. Portion of these lands may be impacted by fast flowing water, ponding, insect and animal habitat and odours associated with their designed use."
8. The Owner acknowledges and agrees to convey any easement(s) as deemed necessary by Bell Canada to service this new development. The Owner further agrees and acknowledges to convey such easements at no cost to Bell Canada. The Owner agrees that should any conflict arise with existing Bell Canada facilities where a current and valid easement exists within the subject area, the Owner shall be responsible for the relocation of any such facilities or easements at their own cost.

9. In the event that easement(s) are required by Enbridge Gas Inc. to service this development, and any future adjacent developments, the applicant will provide the easement(s) to Enbridge Gas Inc. at no cost.
10. The Developer shall co-ordinate the preparation of an overall utility distribution plan and make arrangements to the satisfaction of all affected authorities for the provision of underground utility services internal and external to this development.
11. The Developer shall enter into any agreement as required by utility companies for installation of services, including street lighting, all in accordance with the standards of the Town of Pelham. All utilities servicing the subdivision shall be underground. Upon installation and acceptance by the Town, streetlights and streetlight electrical supply system will be added to the Town's inventory.
12. The Developer agrees to direct street and park lighting from poles away from existing residents and the wooded area. Fixtures shall direct light downward and not create light pollution.
13. The Developer shall include on all offers of purchase and sale, a statement that advises the prospective purchaser that:
 - i) the home/business mail delivery will be from a designated Central Mail Box;
 - ii) the developer/owners be responsible for officially notifying the purchasers of the exact Centralized Mail Box locations prior to the closing of any home sales.
14. The Developer agrees to:
 - i) work with Canada Post to determine and provide temporary suitable Centralized Mail Box locations which may be utilized by Canada Post until the curbs, boulevards and sidewalks are in place in the remainder of the development;
 - ii) install a concrete pad in accordance with the requirements of and in locations to be approved by Canada Post to facilitate the placement of Community Mail Boxes;
 - iii) identify the pads above on the engineering servicing drawings. Said pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the plan of subdivision;
 - iv) determine the location of all centralized mail receiving facilities in co-operation with Canada Post and to indicate the location of the centralized mail facilities on appropriate maps, information boards and plans. Maps are also to be prominently displayed in the sales office(s) showing specific Centralized Mail Facility locations.
15. The Developer shall provide a walkway or sidewalk in front of the townhouses facing the park.
16. That the Developer shall preserve the row of trees on the south edge of the park to the satisfaction of the Director of Public Works.
17. The Developer shall provide evergreen plant material to screen headlight glare from the ends of the street and laneway to the rear yards of homes along Rhodes Court to the satisfaction of the Director of Public Works and the Director of Planning and Development.
18. That the Developer shall convey land in the amount of 5% of the land included in the plan to the Town of Pelham for park purposes as permitted in Section 51.1 of the Planning Act R.S.O. 1990, c. P.13. Alternatively, the Town may accept cash-in-lieu of the conveyance and under the provisions of Section 51.1 (3) of the Planning Act R.S.O. 1990, c.P.13. The Town will provide the developer with a cash payment of 50% of the design and installation of the parking lots to be constructed on Town property from the parkland reserve.
19. The Developer shall install a chain link fence along the rear of lots 1 through 3 and a privacy fence at the rear of lots 4 through 7 and along the east side

of lot 7.

20. That the design of all municipal and public utility services for the Subdivision be coordinated with adjacent development.
21. The Developer agrees that should any conflict arise with existing Niagara Peninsula Energy Inc. facilities or easements within the subject area, the owner shall be responsible for the relocation of any such facilities or easements at their own cost.
22. That prior to registration of this plan, the Developer must obtain Environmental Compliance Approval from the Ministry of Environment, Conservation and Parks for sewer and storm water management works needed to service the proposed development. Prior to installing the watermain to service the proposed development, the Developer must submit Ministry of Environment, Conservation and Parks 'Form 1' Record of Watermain.
23. Prior to final approval for registration of this plan, the Developer shall submit the design drawings (with calculations) for the sanitary and storm drainage systems required to service this development and obtain Environmental Compliance Approval from the Ministry of Environment and Climate Change under the Transfer of Review Program to the satisfaction of the Regional Municipality of Niagara Planning and Development Services Department. (Note: Any new storm sewer outlet to a creek or storm water management scheme designed for quantity control/quality improvement will require the direct approval of the Ministry of the Environment and Climate Change – Approvals Branch, Toronto Office).
24. That the Developer shall dedicate Blocks 13-17 to the Town of Pelham, free and clear of any mortgages, liens and encumbrances as 0.3 m Reserves.
25. That the Developer will not negatively impact trees on neighbouring properties.
26. The Developer agrees to provide on-street parallel parking on the side of the street adjacent to the laneway townhouses, where there are no driveways to the satisfaction of the Director of Public Works.
27. The Developer shall provide a median in the entrance boulevard with a minimum width to sustain plant material including trees and low vegetation such as grasses, forbes and shrubs.
28. The Developer shall provide a variety of street trees on both sides of all streets, spaced approximately 6 -10 metres on centre. Species must: be large canopy trees with wide spreading crowns at maturity; have measurable annual growth (not slow to establish or grow); perform an infrastructural role including attenuating stormwater and enhancing ecological function; have seasonal appeal such as flowers and vivid leaf colours; promote biodiversity and avoid monoculture.
29. The Developer shall provide hard surface accessible, minimum of 2.1 metres in width sidewalks.
30. The Developer shall provide sidewalks on both sides of the boulevard entrance with connections to other trails and sidewalks.
31. The Developer shall provide a sidewalk on the internal street and on one side at a minimum on the side of the laneway townhouses.
32. That prior to any construction taking place within the Town road allowance, the Developer shall obtain a Town of Pelham Temporary Works Permit. Applications must be made through the Department of Public Works.
33. That following completion of any remediation and/or risk assessment work

(if required), a Record of Site Condition (RSC) shall be filed on the Ministry of the Environment, Conservation and Parks' (MECP) Environmental Site Registry in accordance with Environmental Protection Act and associated regulations, as amended. Finalized copies of the Environmental Site Assessments, site remediation reports, MECP written acknowledgement of the filing of the RSC, and certification from a Qualified Professional (QP) outlining that the property meets the applicable standard(s) of the intended land uses, shall be submitted to Niagara Region. A reliance letter from a QP shall also be submitted to Niagara Region to indicate that, despite any limitations or qualifications included in the above submitted reports/documents, the Region is authorized to rely on all information and opinions provided in the reports submitted to clear this condition.

34. The Subdivision Agreement contains the following clause:

“Should deeply buried archaeological remains/resources be found during construction activities, all activities impacting archaeological resources must cease immediately, and the proponent must notify the Archaeology Programs Unit of the Ministry of Heritage, Sport, Tourism and Culture Industries (416-212-8886) and contact a licensed archaeologist to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists.

In the event that human remains are encountered during construction, all activities must cease immediately and the local police as well as the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, the Ministry of Heritage, Sport, Tourism and Culture and Industries should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act.”

35. The owner submit a written undertaking to the Niagara Region Planning and Development Services Department that draft approval of this subdivision does not include a commitment of servicing allocation by the Regional Municipality of Niagara as this servicing allocation will be assigned at the time of registration and any pre-servicing will be at the sole risk and responsibility of the owner.
36. The owner submit a written undertaking to the Niagara Region Planning and Development Services Department that all offers and agreements of Purchase and Sale, which may be negotiated prior to registration of this subdivision, shall contain a clause indicating that a servicing allocation for this subdivision will not be assigned until the plan is registered, and a similar clause be inserted in the subdivision agreement between the owner and the Town.
37. That prior to final approval for registration of this plan of subdivision, the owner shall submit design drawings (with calculations) for the sanitary and storm drainage systems required to service this development and obtain Ministry of the Environment, Conservation and Parks, Compliance Approval under the Transfer of Review Program.
38. That prior to approval of the final plan or any on-site grading, the owner shall submit a detailed stormwater management plan for the subdivision and the following plans designed and sealed by a qualified professional engineer in accordance with the Ministry of the Environment and Climate Change documents entitled Stormwater Management Planning and Design Manual, March 2003 and Stormwater Quality Guidelines for New Development, May 1991, or their successors to the Niagara Region Planning and Development Services Department for review and approval:
- i) Detailed lot grading, servicing and drainage plans, noting both existing and proposed grades and the means whereby overland flows will be accommodated across the site; and

ii) Detailed erosion and sedimentation control plans.

39. That the owner shall comply with Niagara Region's Corporate Waste Collection Policy, and complete the application for commencement of collection and indemnity agreement.

40. The subdivision agreement shall contain provisions whereby the owner agrees to implement the approved plans required in accordance with the above-noted conditions.

SCHEDULE "H"

BUILDING RESTRICTIONS

(To be included in all Deeds)

The Developer shall cause to be Registered against all Lots in the Subdivision the transfer restrictions and restrictive covenants outlined below.

According to the nature of the annexed instrument, the words "Vendor", "Purchaser" and "Land" shall have the following meaning:

- (a) "VENDOR" means and includes also a grantor, transferor or seller and the heirs, successors and assigns of the Vendor.
- (b) "PURCHASER" means and includes also a grantee, transferee or buyer and the heirs, successors and assigns of the Purchaser.
- (c) "LAND" means and includes the land intended to be sold, conveyed or transferred by such instrument.

The Purchaser shall, in respect of the herein described land, adhere to and comply with the Lot grading plan attached to the subdivider's agreement registered in the Land Titles Office for Niagara South and, in particular, shall do nothing to interfere with or impede the drainage patterns shown thereon. All grade elevation shown on the said Lot grading plan shall be maintained after construction of any building or structure upon the herein described land in accordance with the Town's Lot Grading Control Policy. In the event that the Purchaser fails to maintain such elevations, or to maintain the proper grades and levels herein referred to, or in the event that the Purchaser impedes any drainage system or pattern on the herein described Lands or neighbouring lands, the Purchaser shall be responsible for the immediate rectification and alteration of the land to conform with the drainage system or patterns laid out in the subdivider's agreement for any consequential damages, costs, expenses or other loss caused by the failure to maintain such grades or drainage patterns.

The Purchaser shall, in the event of requiring a different driveway entrance from that installed by the Vendor, relocate services/utilities at purchaser's expense, cut and reconstruct the concrete curb where necessary on the roadway adjacent to the land herein described. He/she shall install, keep and maintain his driveway entrance or entrances from the travelled portion of the roadway to the Lot line in good condition until the concrete sidewalk, concrete curbs and/or asphalt roadways for the said Subdivision are constructed.

The Purchaser shall, within nine (9) months of being able to occupy the home in accordance with the *Ontario Building Code* and to the satisfaction of the Chief Building Official, pave or cause to be paved the driveway upon the Lot. Paving shall consist of a hard surface such as asphalt, concrete, paving stones, paving bricks or other similar materials. Crushed brick is not a suitable alternative.

The Purchaser shall, within twelve (12) months of being able to occupy the home in accordance with the *Ontario Building Code* and to the satisfaction of the Chief Building Official, sod/hydroseed the lot.

The Purchaser shall maintain the road allowance between the Lot line and the curb nearest thereto in good condition and free from weeds and shall cut the grass thereon at frequent intervals.

The Purchaser will not remove any topsoil or strip the Lot of vegetation prior to commencing construction of a home on the Lot. Only then will the Purchaser strip and excavate to the limit approved by the Town.

SCHEDULE "H"

BUILDING RESTRICTIONS

(To be included in all Deeds)
(Continued)

The Purchaser shall not occupy the dwelling on the Lot concerned until the Chief Building Official for the Town has certified that such of the following services, as are applicable to the property, have been installed and are operating adequately to serve the dwelling, or in the case of telephone services, are at least available to houses within the Plan: hydro, gas, water services, sanitary sewers and telephone.

The Purchaser shall not impede by the placing of fill, Buildings or other structures or Works any natural watercourse, swale, ditch, etc. which exists on the property.

The Purchaser shall not discharge by direct connection to a sanitary or storm sewer any discharge from eavestroughing, downspouts or swimming pools.

The Purchaser shall not erect any free standing tower, radio antenna, communication tower or similar structure.



The Corporation of the Town of Pelham

By-law No. 25-2023

Being a by-law to adopt, ratify and confirm the actions of the Council at its regular meeting held on the 05th day of April 2023.

WHEREAS section 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act, 2001*" or "the statute") provides that, unless otherwise authorized, the powers of Council shall be exercised by by-law;

AND WHEREAS it is deemed desirable and expedient that the actions of the Council as herein set forth be adopted, ratified and confirmed by by-law;

NOW THEREFORE the Council of the Corporation of the Town of Pelham enacts as Follows:

- 1.** (a) The actions of the Council at its meeting held on the 05th day of April, 2023, including all resolutions or motions approved, are hereby adopted, ratified and confirmed as if they were expressly embodied in this by-law.

(b) The above-mentioned actions shall not include:
 - i. any actions required by-law to be taken by resolution; or
 - ii. any actions for which prior Ontario Municipal Board approval is required, until such approval is obtained.
- 2.** The Mayor and proper officials of the Corporation of the Town of Pelham are hereby authorized and directed to do all things necessary to give effect to the above-mentioned actions and to obtain approvals where required.
- 3.** Unless otherwise provided, the Mayor and Clerk are hereby authorized and directed to execute and the Clerk to affix the seal of the Corporation of the Town of Pelham to all documents necessary to give effect to the above-mentioned actions.
- 4.** This By-law shall come into force on the date that it is enacted.

Read, enacted, signed and sealed this 05th day of April, 2023.

Marvin Junkin, Mayor

William Tigert, Town Clerk