

Growth Management and Planning Division

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Via Email

March 19, 2024

Regional File: D.06.06.CS-23-0114, D.06.06.CS-23-0115

Sarah Leach
Deputy Clerk/Secretary-Treasurer
Town of Pelham
20 Pelham Town Square, P.O. Box 400
Fonthill, ON L0S 1E0

Dear Ms. Leach:

**Re: Regional and Provincial Review Comments
Consent Applications
Town File: B4-2024P, B5-2024P, A6-2024P & A7-2024P
Owner: [REDACTED]
Agent/Applicant: [REDACTED]
201 Canboro Road
Town of Pelham**

Regional Growth Management and Planning Division staff has reviewed the materials circulated with the two Consent applications for the lands located at 201 Canboro Road in the Town of Pelham (“subject lands”).

The applicant is proposing consent to partial discharge of mortgage and consent to convey 404 sq. m of land (“Part 1”) and 401 sq. m. of land (“Part 2”) for future construction of semi-detached dwellings. The lands referred to as “Part 3” are to be dedicated to the Town of Pelham for a road widening. The remaining land (“Part 4”) is to be retained for continued residential use.

A pre-consultation meeting for the applications was held on March 17, 2022. Staff provided comments on the initial submission of the application in a letter dated December 21, 2023. At this time staff were unable to support the application due to concerns relating to the septic system requirements, and the application was deferred.

The following comments are provided from a Provincial and Regional perspective to assist the Town in its consideration of these applications.

Provincial and Regional Policies

The subject lands are located partially within the Settlement Area (Part 1 and 2 and the northeastern portion of Part 4 (“remnant parcel”) and partially within the Prime Agricultural Area (and more specifically the Speciality Crop Area) (the remaining lands of Part 4) under the *Provincial Policy Statement, 2020* (PPS). A majority of the property is located within the Protected Countryside – Niagara Tender Fruit and Grape Area - within the *Greenbelt Plan, 2017* (“Greenbelt Plan”). The lands are designated in part as Delineated Built-Up Area (Part 1 and 2

and the northeastern portion of the remnant parcel) and in part as Specialty Crop Area (remaining lands of the remnant parcel) within the *Niagara Official Plan, 2022* (“NOP”). Staff acknowledge that the applications for Consent are confined to the Settlement Area/Delineated Built-Up Area, where population growth will be accommodated primarily through intensification, and that no new lots or development are proposed in the Specialty Crop Area.

Regional staff has reviewed the *Planning Brief* prepared by Upper Canada Consultants (no date). Staff acknowledge that the lands proposed to be severed are located entirely within the Urban/Settlement Area and, therefore, the proposal does not result in the creation of an additional new residential lot within the agricultural land base. Further, the Brief notes that the proposed residential development (semi-detached dwelling) would expand the range of available housing options and increase the housing supply, which is consistent with Provincial and Regional policies. The Brief references the Environmental Impact Study (“EIS”) completed for the subject property, which identifies and assesses the proposals impact on the natural heritage features on the subject property (see the ‘Natural Environment System’ section below).

Overall, staff is satisfied with the analysis provided in the Planning Brief and have no further comments from a planning perspective.

Archaeological Resources

The subject property falls within the area of archaeological potential, as identified in Schedule ‘K’ of the NOP. Provincial and Regional policies state that development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved or the land has been investigated and cleared or mitigated following clearance from the Province.

Staff has reviewed the *Stage 1-2 Archaeological Assessment* prepared by Detritus Consulting Ltd. (dated November 7, 2022). Based on recommendations from the Town, the assessment was limited to the lands subject to development and ground disturbance (“study area”), which makes up 0.37 ha of the 0.88 ha lot. The Stage 1 assessment identified six archaeological sites within a 1 kilometre radius of the study area. The assessments indicates that there is land disturbance from the existing buildings/structure on the property, which may eradicate archaeological potential. It was recommended that these areas be subject to a Stage 2 field assessment to confirm and document the degree and extent of disturbance.

The Stage 2 field assessment was conducted on August 25, 2022 which included test pit surveying of the treed area, side and backyards, manicured front yard, and greenspace behind the residential properties. The test pit survey was conducted within 1 metre of the building structures or until test pits showed evidence of recent ground disturbance. The field assessment concluded that the lands were free and clear of archaeological resources and that no further archaeological assessment was recommended.

Staff received a copy of the acknowledgement/acceptance letter from the Ministry of Citizenship and Multiculturalism (dated October 16, 2023).

Recognizing that no archaeological survey, regardless of its intensity, can entirely negate the possibility of deeply buried archaeological materials, Regional staff recommend the inclusion of the following standard archaeological clauses in the development agreement relating to deeply buried archaeological materials that may be encountered during grading and construction activities:

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 Citizenship and Multiculturalism (MCM) (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 Niagara Regional police as well as the Cemeteries Regulation Unit of the Ministry of Public and Business Services Delivery (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, the MCM 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.

Regional staff advise that any future development outside of the study area will require a separate Stage 1-2 archaeological assessment.

Natural Environment System

As previously noted, a pre-consultation meeting for the proposal was held on March 17, 2022 prior to the approval of the NOP by the Minister of Municipal Affairs and Housing on November 4, 2022. Policy 3.1.30.3.1 of the NOP states that, where a formal pre-consultation meeting has been completed within one (1) year of the approval of the NOP, and environmental requirements have been established through a signed pre-consultation agreement that has not expired, required environmental studies may be evaluated in accordance with the Regional policies that existed at the time the pre-consultation meeting was completed (provided the application is submitted within two years of the approval of the NOP). Accordingly, the environmental policies of the previous *Regional Official Plan, 2014* ("ROP") apply to the proposal.

Under the ROP, the subject lands are impacted by the Region's Core Natural Heritage System ("CNHS"), consisting of Significant Woodland, Significant Valleyland and a watercourse associated with Coyle Creek. As such, consistent with ROP policy 7.B.1.11, an Environmental Impact Study ("EIS") was requested in support of site alteration and/or development proposed adjacent to CNHS features to demonstrate that there will be no significant negative impact on the features or their ecological/hydrological function.

Regional staff reviewed the *Environmental Impact Study*, prepared by Terrastory Ecological Consulting Inc. (dated November 29, 2023), which confirms the presence of Significant Woodland, Significant Valleyland and the tributary of Coyle Creek. In addition, through the completion of ecological studies, the EIS identifies that the wooded valleyland contains Significant Wildlife Habitat associated with a Provincially Rare tree species (Pignut Hickory), Special Concern bird species (Eastern Wood-pewee) and significant Deer Wintering Area. Further, an Eastern Flowering Dogwood (endangered tree species) was identified within the manicured amenity space in front of the existing residence, while candidate Endangered Bat habitat is associated with the wooded valleyland.

The subject lands are currently developed with existing buildings and structures that extend into the valleyland/woodland. The EIS indicates that through this application, three of the existing residential buildings will be demolished, as well as the existing septic system for the

westernmost residence on the retained parcel. All new development (including lot lines) is proposed outside of the approved valleyland top of bank and Significant Woodland dripline. The Eastern Flowering Dogwood is proposed to be protected during demolition of the existing residence with tree protection fencing. Implementation of a Woodland Enhancement Plan is recommended in the EIS to enhance the ecological functions of the woodland/valleyland beyond existing conditions (i.e., achieve a net ecological benefit). A component of the Woodland Enhancement Plan includes restoring the open meadow area that occurs within the valleyland.

Staff is satisfied with the characterization of the subject lands. Provided the recommendations and mitigation strategy outlined in the EIS are implemented, the Region is satisfied that the ROP's policy test of 'no significant negative impact' to the CNHS has been achieved.

That said, the CNHS feature that has been characterized as high-functioning and the 0 metre setback is not sufficient to meet the 'no negative impact' test of the PPS. As such, the Region recommends the buffer width adjacent to the woodland/valleyland be maximized to extent possible to ensure no negative impacts to the adjacent woodland and valleyland. Staff, therefore, recommend that an updated Consent sketch be provided to the Region and Town for review that is consistent with and satisfactorily addresses the PPS test. Should the proposed lot fabric be deemed appropriate by the Committee, recommended conditions of approval relating to each proposed new lot are provided in the attached Appendix I to ensure EIS recommendations and mitigation measures are implemented.

Municipal Servicing – Proposed Lots (Parts 1 and 2)

The proposed two new lots are within the urban area; therefore, it is assumed they will be serviced by municipal servicing. The extension of the low pressure system will be under the jurisdiction and approval by the Town of Pelham. If there are any crossings of the Regional watermain detailed drawings are to be provided to the Region for review and approval prior to approval by the Town.

The only watermain available is a Regional hybrid watermain. The Region will require that detailed engineering plans be provided for the proposed water servicing for the two new lots. A Regional connection permit will be required for connections to the watermain. To obtain the connection permit a letter from the Town, detailed engineering drawings and a fee of \$1,250 will need to be provided to the Niagara Region (to the attention of Susan Dunsmore, P. Eng. Manager of Development Engineering at 905-980-6000 ext. 3661). Please be advised that connection permits are only valid for a period of one year.

Private Servicing – Retained Lot (Part 4)

Regional Private Sewage System staff conducted an on-site inspection on December 21, 2023. The property currently contains three dwellings that are privately serviced by sewage systems to the north. The existing septic tanks are located north of the dwellings and are to be decommissioned prior to the connection to municipal sewers or demolition. Staff advise that a tank decommissioning application issued by the Niagara Region will be required prior to demolition of the existing dwellings.

Staff received additional information indicating that the retained parcel has a replacement sewage system area. A percolation test was completed on-site which concluded an inground sewage system could be installed on the property in the future. No defects were observed with the system at the time of inspection; however, this system is considered legal non-conforming

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as it contains a single chamber tank, and the bed is located in a steep slope. Any future changes to the dwelling which increase sewage flows would require a new sewage system in the replacement area to be installed. Staff note that all trees and driveway surfaces will need to be removed to ensure that the minimum building code setback area is achieved as per the Ontario Building Code (O. Reg. 332/12). The setbacks include 1.5 m from the septic tank to a structure and 5 m from the septic bed to a structure (driveway).

Therefore, Regional staff has no objection to the applications from a private servicing perspective, provided the two existing septic tanks are properly decommissioned and tank decommissioning applications are submitted to the Region.

Waste Collection

- Blue/grey –no limit (weekly)
- Green – no limit (weekly)
- Waste – 2 bag/can limit per lot (bi-weekly)
- **Curbside collection only**

Circular Materials Ontario is responsible for the delivery of residential Blue / Grey Box recycling collection services currently administered by Niagara Region. The most up to date information can be found using the following link: <https://www.circularmaterials.ca/resident-communities/niagara-region/>

Regional Bicycle Network

The subject property has frontage on Canboro Road, which is designated as part of the Regional Niagara Bicycling Network. If the bicycle routes are currently not established and identified with signage, it is the intent of the Region to make provisions for doing so when an appropriate opportunity arises. This may involve additional pavement width, elimination of on-street parking, etc.

Conclusion

Regional Growth Management and Planning Division staff has determined that the applications are consistent with the *Provincial Policy Statement* and in conformity with Provincial and Regional plans. As such, staff offer no objection to the applications, provided the two existing septic tanks are properly decommissioned and tank decommissioning applications are submitted to the Region.

The required connection permits for connection to the Regional watermain must be applied for, including the submission of detailed plan and profile drawings.

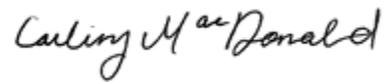
Preliminary conditions of approval are provided in the attached Appendix I for information with respect to implementation of the Environmental Impact Study recommendations and mitigation measures and archaeological advisory clauses.

Please contact the undersigned at Carling.MacDonald@niagararegion.ca or Pat Busnello at Pat.Busnello@niagararegion.ca should you have any questions related to the above comments.

Please send the Notice of Committee's Decision on these Applications when available.

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Best Regards,

A handwritten signature in black ink that reads "Carling MacDonald". The signature is written in a cursive, slightly slanted style.

Carling MacDonald

Development Planner, Niagara Region

cc. Pat Busnello, MCIP, RPP, Manager of Development Planning, Niagara Region
Susan Dunsmore, P.Eng., Manager of Development Engineering, Niagara Region
Caitlin Goodale, Private Sewage System Inspector, Niagara Region
Adam Boudens, MSc, Senior Environmental Planner, Niagara Region

Appendix I

Preliminary Conditions of Approval

Consent File: B4-2024P - Part 1

That the landowner enters a Development Agreement with the Town of Pelham for Part 1, to be registered on title, which requires that the owner implement the recommendations of the Environmental Impact Study (prepared by Terrastory Ecological Consulting Inc., dated November 29, 2023), including but not limited to:

- a) That a Tree Preservation Plan (TPP) be prepared, to the satisfaction of Niagara Region, that indicates any trees that need to be removed to allow for the development of Part 1. The TPP should be prepared in accordance with the Region's Woodland Conservation By-law (By-law 20-79).
- b) That the development agreement contain wording wherein the owner agrees to implement the approved Tree Preservation Plan, prior to construction.
- c) Any necessary tree removal and demolition of the existing buildings or structures will take place between October 1 and April 30 to avoid the active season for bats. Should minor tree removal be required between May 1 and September 30, a qualified professional will complete an exit survey of suitable maternal roosting sites identified for removal a maximum of 24 hours before removal. The exit survey must make use of a bat detector and will occur for no less than the time period between sunset and 60 minutes after sunset. If an Endangered bat is identified during the survey, Ministry of the Environment, Conservation and Parks (MECP) should be contacted to obtain further direction prior to removal of the tree.
- d) If construction activities occur during the active bat season (i.e., May 1 and September 30), work will be restricted to daylight hours only and the use of artificial lighting will be avoided.
- e) Any lighting incorporated into the final building designs should be directed downward (i.e., towards the ground) and/or away from the adjacent woodlot (i.e., directed eastward) to the extent practicable.
- f) The removal of trees will be restricted to areas in direct conflict with the footprints of the proposed development features (e.g., residence, septic system, driveway, etc.) and grading, along with any hazardous trees in the immediate vicinity that pose an unacceptable risk to human life or property.
- g) All necessary vegetation removal will be completed outside the primary bird nesting period (i.e., to be completed between September 1 and March 31). Should minor vegetation removal be proposed during the bird nesting period, a bird nesting survey will be undertaken to confirm the presence or absence of nesting birds or bird nests within or adjacent to the areas subject to vegetation clearance. The survey is to take place within 48 hours of vegetation removal.
- h) Incorporation of Bird-Friendly Guidelines into the residence design such as those published in City of Toronto's "Best Practices for Bird-Friendly Glass" and "Best Practices for Effective Lighting" should be considered at detailed design.

- i) Any Landscape Plans prepared as part of the development approval should incorporate species native to the local landscape.
- j) That a light duty silt fence be installed at the limit of any excavation and grading to delineate the work area and help minimize impacts (e.g., sedimentation and accidental encroachment) to adjacent vegetation and that the silt fence be properly embedded (as per Ontario Provincial Standard Specification 805) into the ground to reduce any offsite movement of silt. The silt fence used should be one that does not include a mesh component, to avoid risk of entanglement of wildlife.
- k) That the contractor has a spill kit on site to minimize potential contamination from accidental spills. The equipment should be inspected for leaks and refueling be completed in accordance with best management practices and at least 30 m away from the woodland.
- l) That continuous, permanent fencing be installed along the rear property line, adjacent to the Significant Woodland, to delineate property boundaries to limit potential encroachment into the woodland.

Consent File: B5-2024P - Part 2

That the landowner enters a Development Agreement with the Town of Pelham for Part 2, to be registered on title, which requires that the owner implement the recommendations of the Environmental Impact Study (prepared by Terrastory Ecological Consulting Inc., dated November 29, 2023), including but not limited to:

- a) That a Tree Preservation Plan (TPP) be prepared, to the satisfaction of Niagara Region, that indicates any trees that need to be removed to allow for the development of Part 2. The TPP should be prepared in accordance with the Region's Woodland Conservation By-law (By-law 20-79).
- b) That the development agreement contain wording wherein the owner agrees to implement the approved Tree Preservation Plan, prior to construction.
- c) Any necessary tree removal and demolition of the existing buildings or structures will take place between October 1 and April 30 to avoid the active season for bats. Should minor tree removal be required between May 1 and September 30, a qualified professional will complete an exit survey of suitable maternal roosting sites identified for removal a maximum of 24 hours before removal. The exit survey must make use of a bat detector and will occur for no less than the time period between sunset and 60 minutes after sunset. If an Endangered bat is identified during the survey, Ministry of the Environment, Conservation and Parks (MECP) should be contacted to obtain further direction prior to removal of the tree.
- d) If construction activities occur during the active bat season (i.e., May 1 and September 30), work will be restricted to daylight hours only and the use of artificial lighting will be avoided.
- e) Any lighting incorporated into the final building designs should be directed downward (i.e., towards the ground) and/or away from the adjacent woodlot (i.e., directed eastward) to the extent practicable.

- f) The removal of trees will be restricted to areas in direct conflict with the footprints of the proposed development features (e.g., residence, septic system, driveway, etc.) and grading, along with any hazardous trees in the immediate vicinity that pose an unacceptable risk to human life or property.
- g) All necessary vegetation removal will be completed outside the primary bird nesting period (i.e., to be completed between September 1 and March 31). Should minor vegetation removal be proposed during the bird nesting period, a bird nesting survey will be undertaken to confirm the presence or absence of nesting birds or bird nests within or adjacent to the areas subject to vegetation clearance. The survey is to take place within 48 hours of vegetation removal.
- h) Incorporation of Bird-Friendly Guidelines into the residence design such as those published in City of Toronto's "Best Practices for Bird-Friendly Glass" and "Best Practices for Effective Lighting" should be considered at detailed design.
- i) Any Landscape Plans prepared as part of the development approval should incorporate species native to the local landscape.
- j) That a light duty silt fence be installed at the limit of any excavation and grading to delineate the work area and help minimize impacts (e.g., sedimentation and accidental encroachment) to adjacent vegetation and that the silt fence be properly embedded (as per Ontario Provincial Standard Specification 805) into the ground to reduce any offsite movement of silt. The silt fence used should be one that does not include a mesh component, to avoid risk of entanglement of wildlife.
- k) That the contractor has a spill kit on site to minimize potential contamination from accidental spills. The equipment should be inspected for leaks and refueling be completed in accordance with best management practices and at least 30 m away from the woodland.
- l) That continuous, permanent fencing be installed along the rear property line, adjacent to the Significant Woodland, to delineate property boundaries to limit potential encroachment into the woodland.

Consent Files: B4-2024P & B5-2024P - Part 4

That the landowner enters a Development Agreement with the Town of Pelham for Part 4, to be registered on title, which requires that the owner implement the recommendations of the Environmental Impact Study (prepared by Terrastory Ecological Consulting Inc., dated November 29, 2023), including but not limited to:

- a) That a Woodland Enhancement Plan be prepared, to the satisfaction of Niagara Region, for the area indicated on Figure 3 of the EIS. The Plan shall consist of a diversity of native tree and shrub plantings and incorporate wildlife habitat enhancement elements. Plantings of Pignut Hickory shall be incorporated into the Woodland Enhancement Plan
- b) That a Tree Preservation Plan (TPP) be prepared, to the satisfaction of Niagara Region, that indicates any trees that need to be removed to allow for the

development of Part 4. The TPP should be prepared in accordance with the Region's Woodland Conservation By-law (By-law 20-79).

- c) That the development agreement contain wording wherein the owner agrees to implement the approved Tree Preservation Plan and Woodland Enhancement Plan, prior to construction.
- d) That tree protection fencing be installed surrounding the Eastern Flowering Dogwood at the time of construction to avoid incidental mechanical damage to the trunk, branches, or roots.
- e) Any necessary tree removal and demolition of the existing buildings or structure will take place between October 1 and April 30 to avoid the active season for bats. Should minor tree removal be required between May 1 and September 30, a qualified professional will complete an exit survey of suitable maternal roosting sites identified for removal a maximum of 24 hours before removal. The exit survey must make use of a bat detector and will occur for no less than the time period between sunset and 60 minutes after sunset. If an Endangered bat is identified during the survey, Ministry of the Environment, Conservation and Parks (MECP) should be contacted to obtain further direction prior to removal of the tree.
- f) If construction activities occur during the active bat season (i.e., May 1 and September 30), work will be restricted to daylight hours only and the use of artificial lighting will be avoided.
- g) The removal of trees will be restricted to areas in direct conflict with the footprints of the proposed development features (e.g., residence, septic system, driveway, etc.) and grading, along with any hazardous trees in the immediate vicinity that pose an unacceptable risk to human life or property.
- h) All necessary vegetation removal will be completed outside the primary bird nesting period (i.e., to be completed between September 1 and March 31). Should minor vegetation removal be proposed during the bird nesting period, a bird nesting survey will be undertaken to confirm the presence or absence of nesting birds or bird nests within or adjacent to the areas subject to vegetation clearance. The survey is to take place within 48 hours of vegetation removal.
- i) Any Landscape Plans prepared as part of the development approval should incorporate species native to the local landscape.
- j) That a light duty silt fence be installed at the limit of any excavation and grading to delineate the work area and help minimize impacts (e.g., sedimentation and accidental encroachment) to adjacent vegetation and that the silt fence be properly embedded (as per Ontario Provincial Standard Specification 805) into the ground to reduce any offsite movement of silt. The silt fence used should be one that does not include a mesh component, to avoid risk of entanglement of wildlife.
- k) That the contractor has a spill kit on site to minimize potential contamination from accidental spills. The equipment should be inspected for leaks and refueling be completed in accordance with best management practices and at least 30 m away from the woodland.

Consent Files: B4-2024P & B5-2024P

That the following archaeological advisory clause be inserted in the Development Agreement between the landowner and Town of Pelham:

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 Citizenship and Multiculturalism (MCM) (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 Niagara Regional police as well as the Cemeteries Regulation Unit of the Ministry of Public and Business Services Delivery (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, the MCM 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.