

## **Planning and Development Services**

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### **Via Email Only**

June 7, 2021

File No.: D.06.07.CS-21-0040

Chris Roome  
Secretary-Treasurer, Committee of Adjustment  
City of Port Colborne  
66 Charlotte Street  
Port Colborne, ON L3K 3C8

Dear Mr. Roome:

**Re: Provincial and Regional Comments**  
**Consent Application B09-21-PC**  
**Owner: David Bankert**  
**Agent: Christopher Wilson**  
**Address: 650 Lorraine Road, City of Port Colborne**

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Regional Planning and Development Services staff have reviewed the above-noted consent application, which is made to convey Part 1 (0.6855 ha) for an existing residential use (single detached dwelling). Part 2 (13.83 ha) will be retained for an existing agricultural use.

The Region received the application on May 25, 2021. A virtual pre-consultation meeting was held on November 12, 2020, with City and Regional staff and the owner in attendance. The following Provincial and Regional Comments are provided to assist the Committee in their consideration of the application from a Provincial and Regional perspective.

### **Provincial and Regional Policies**

The subject land is located within a Prime Agricultural Area under the Provincial Policy Statement (PPS), identified as Prime Agricultural Area under the Agricultural System of the A Place to Grow: Growth Plan for the Greater Golden Horseshoe (Growth Plan), and designated Good General Agricultural Area in the Regional Official Plan (ROP). Provincial and Regional policies protect prime agricultural land and restrict new lot creation in the agricultural area, except for the following circumstances:

- agricultural uses, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations;
- agriculture-related uses, provided that any new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services;
- a residence surplus to a farming operation as a result of farm consolidation, provided that:
  - the new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services; and
  - the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance. The approach used to ensure that no new residential dwellings are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches which achieve the same objective; and
- infrastructure, where the facility or corridor cannot be accommodated through the use of easements or rights-of-way; and,
- lot adjustments for legal or technical reasons.

The application has been submitted as a consent for a residence surplus to a farming operation. The PPS defines a farm consolidation as the acquisition of additional farm parcels to be operated as one farm parcel. The consent application proposes to sever the existing dwelling (Part 1) from the farmland (Part 2). Information submitted by the owner indicates that approximately 728 ha (225 acres) of land is farmed by the owner for cash crops. Provided the remnant parcel (Part 2) will be consolidated with this operation, the proposal constitutes a farm consolidation. The existing dwelling is surplus to the farming operation as the farmer's primary residence is 856 Weaver Road, Port Colborne. In this regard, the application appears to meet the policy requirement of being a residence surplus to a farming operation as a result of a farm consolidation.

The ROP specifies certain conditions that must be met for proposed residential lots that meet the criteria outlined above. Specifically, new lots should not exceed an area of 0.4 hectares (1 acre) unless additional area is required to support a well and private sewage disposal system. Part 1 is proposed to be 0.6855 hectares in area, which is larger than the maximum size permitted by the ROP. The parcel includes lands currently in agricultural production; however, as outlined below under the Hydrogeological Study and Private Servicing section, this area is required for a replacement septic system as a condition of the application, and additional area will be advantageous to ensure there is sufficient space for a future replacement system without negatively impacting the groundwater quality in the area. Although creation of the parcel as proposed would result in agricultural land being removed from production, the protection of groundwater quality is also a Provincial and Regional policy priority, and so the two goals must be balanced. Regional staff can support the consent application as currently proposed based on the private servicing and groundwater needs unique to this area.

Provided Part 2 is zoned for Agricultural Purposes Only (APO) to prohibit the construction of a new residential dwelling in perpetuity, the proposal will meet the intent of Provincial and Regional policy aimed at protecting the land for long term agricultural use. Regional staff understand that a concurrent Zoning By-law Amendment (ZBA) application has already been submitted, and a Public Meeting is scheduled for June 21, 2021. Regional staff suggest that any decision to approve the consent application be conditional on the approval of this ZBA application, to ensure the remnant parcel is rezoned to APO.

## **Hydrogeological Assessment and Private Servicing**

Staff note that although the proposed lot meets the minimum lot size of 0.4 hectare specified in the ROP, the subject land is located within a Highly Vulnerable Aquifer area, Highly Sensitive Area and has overburden under 2 metres. As such, any new development (including consent applications) require the submission of a hydrogeological study to ensure the new lot is of sufficient size to accommodate a private septic system, while having no significant adverse impacts on ground water quality.

A Hydrogeological Assessment, prepared by Terra-Dynamics Consulting Inc. (dated February 18, 2021) was submitted by the owner. Regional staff have reviewed the report and have no objections. The report requires the location of the new septic system as shown on Figure 4 and a new water cistern to replace the existing well. The new septic system will need to be a minimum of 30 m from the existing shallow well at 672 Lorraine Road (directly north).

Private Septic System (PSS) Inspection staff also reviewed the application.

Part 1 contains a dwelling, detached garage, and some accessory buildings (barn and shed). No record was found for the existing legal non-conforming sewage system servicing the dwelling known as 650 Lorraine Road. Based on the site inspection, it could not be determined if the existing system will be wholly contained within the new proposed lot lines of Part 1. Therefore, a new sewage system will need to be installed meeting minimum Ontario Building Code (OBC) requirements and the recommendations of the above noted Hydrogeological Assessment within Part 1 to service the existing dwelling. It should be noted that Part 2 currently contains a large accessory structure with no plumbing. PSS staff have no objections to the proposed consent, provided a new system is installed meeting the above noted Hydrogeological and minimum OBC requirements to service the existing dwelling on Part 1. All proposed sewage systems for Part 1 shall meet the Hydrogeological conditions and OBC requirements when applying for the sewage system permit.

## **Minimum Distance Separation**

The PPS and Regional policies require that new development, including lot creation, and new or expanding livestock facilities comply with the Minimum Distance Separation (MDS) formulae developed by the Ministry of Agriculture, Food and Rural Affairs (OMAFRA), which is applied in order to separate uses to reduce incompatibility

concerns about odour from livestock facilities. An MDS I setback would be required for an existing dwelling to be severed and a livestock facility/anaerobic digester located on the same lot prior to the consent; however, there is no livestock facility on the proposed remnant lot, so no MDS information was requested at the preconsultation meeting. Regional staff also note that municipalities are responsible for ensuring that MDS setbacks are met when reviewing land use planning applications or building permits. Therefore, the Committee should look for confirmation from City staff that the proposed lot creation meets the MDS setbacks.

## **Archaeological Resources**

The PPS and ROP provide direction for the conservation of significant cultural heritage and archaeological resources. Specifically, Section 2.6.2 of the PPS and Policy 10.C.2.1.13 of the ROP state that development (including lot creation) and site alteration (activities, such as grading, excavation and the placement of fill that would change the landform and natural vegetative characteristics of the site) are not permitted on lands containing archaeological resources or areas of archaeological potential, unless significant archaeological resources have been conserved.

Based on the Ministry of Heritage, Sport, Tourism and Culture Industries' (MHSTCI) Criteria for Evaluating Archaeological Potential, the property exhibits high potential for the discovery of archaeological resources due to proximity (within 300m) to a watercourse on the property. Although the proposal constitutes "development" as defined in the PPS, as it will result in the creation of a new lot, no "site alteration" is proposed as part of this application; therefore, the Region can waive the requirement for a Stage 1 Archaeological Assessment.

## **Core Natural Heritage**

The subject land is impacted by the Region's Core Natural Heritage System (CNHS), consisting of Type 2 (Important) Fish Habitat. Regional Official Plan (ROP) Policy 7.B.1.11 requires that an Environmental Impact Study (EIS) be completed where site alteration and/or development is proposed within 15 m of Type 2 Fish Habitat. The proposed lot is greater than 15 m from Type 2 Fish Habitat. As such, no studies are required and there are no further Environmental Planning comments.

## **Conclusion**

In conclusion, the proposal is consistent with the PPS and conforms to the intent of Provincial or Regional policies for lot creation in the Agricultural Area, subject to the conditions below and confirmation from City staff that the lot complies with the Minimum Distance Separation. Regional staff does not object to the proposed consent, subject to the satisfaction of any local requirements and the following conditions:

1. That the Zoning By-law Amendment application to rezone Part 2 to Agricultural Purposes Only (APO), to prohibit the construction of a new residential dwelling in perpetuity, be approved and in effect;

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2. That a sewage system permit be obtained for a new septic system to service the dwelling on Part 1. The permit application must comply with the recommendations of the Hydrogeological Assessment, prepared by Terra-Dynamics Consulting Inc. (dated February 18, 2021), including a new septic system meeting minimum Ontario Building Code requirements and as shown on Figure 4 of the report, as well as a new water cistern to replace the existing well. The new septic system will need to be a minimum of 30 m from the existing shallow well at 672 Lorraine Road (directly north).

Should you have any questions related to the above comments, please feel free to contact me by email at [Britney.fricke@niagararegion.ca](mailto:Britney.fricke@niagararegion.ca).

Please send a copy of the staff report and notice of the Committee's decision on this application when available.

Kind regards,



Britney Fricke, MCIP, RPP  
Senior Development Planner

cc: Caitlin Goodale, Private Sewage System Inspector, Niagara Region  
David Schulz, Planner, City of Port Colborne