



City of Port Colborne

Municipal Offices
66 Charlotte Street
Port Colborne, Ontario
L3K 3C8
www.portcolborne.ca

Planning and Legislative Services

Planning Division Report Addendum

April 19, 2024

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

**Re: Application for Consent B05-24-PC
VL Firelane 3
Lots 31 to 33 and Lots 57 to 59 Plan 799
Agent: N/A
Owner(s): Peter Smith and Donna Bonato**

RE: Addendum to Planning Division Report for the subject lands dated April 9, 2024.

At the April 10, 2024 Committee of Adjustment hearing, the Committee of Adjustment adjourned the subject application requesting the following additional information from Staff:

- a) A legal opinion on whether the lots have been formally merged;
- b) An analysis of Section 3.4 of the Official Plan; and
- c) An analysis of the criteria under Section 51 (24) of the Planning Act

Legal Opinion on the Status of Lots

Staff have obtained a legal opinion which states that the parcels on the subject land have not merged and are within a plan of subdivision. As such, it is more appropriate for this application to be considered a boundary adjustment, rather than the creation of a new lot as multiple lots already exist on the subject lands. Staff notes that a boundary adjustment is not considered '*development*' under the definition in the Official Plan.

Official Plan Conformity

The subject lands are designated Rural. Below is an analysis of the Rural policies under Section 3.4 of the Official Plan.

3.4.1 General Policies

- a) *Municipal sanitary services and municipal water services will not be provided in the Rural area. All new buildings for human use or habitation shall be located on lots suitable to support a private well and sewage disposal system to the satisfaction of the appropriate agency and may require a hydrogeological study.*
- b) *Lands designated Rural are subject to the Policies for Agricultural uses described in Section 3.5.1.*
- c) *Development which may now or in the future require municipal water services or municipal sanitary services shall not be permitted.*
- d) *A limited volume of growth outside the urban area boundary and hamlet areas shall be permitted in site-specific locations with approved zoning or designation that permits this type of development in accordance with the policies of the Places to Grow Plan.*
- e) *All proposed development shall comply with the Province's Minimum Distance Separation formula and Nutrient Management Plan requirements.*
- f) *In the Rural Area, locally important agricultural and resource areas, including the Aggregate Potential Area delineated on Schedule C ,should be protected by avoiding uses that may constrain these uses.*
- g) *Trailer camps, mobile home parks and other such activities are not permitted.*
- h) *Any new or expanding Commercial or Industrial development as identified in Section 3.4 is subject to Site Plan Control.*

The general policies listed under Section 3.4.1 a) have been addressed as private services are proposed and a hydrogeological assessment has been submitted that confirms the lots are suitable for a private sewage system. Policies b, c, d, e, f, g, and h are not applicable to this application. As the application does not constitute development, no MDS calculation is required. Additionally, the lands are not within range of an active livestock facility.

3.4.2 Intensification and Infill

Intensification may occur on lands designated Rural in accordance with the provisions of Section 2.4.3 as well as the following:

a) New Residential development created through severance shall only be for the purpose of creating up to three (3) lots between two (2) existing residential buildings such that:

- i. The new lots can be adequately serviced by individual sanitary services and individual water services;*
- ii. The size of each lot is a minimum of one (1) hectare, excluding flood plain areas, fish habitat or other Natural Heritage features;*
- iii. Each new lot complies with the requirements of the Zoning By-law as in force and effect at the day of approval of this Plan; and*
- iv. Each new lot complies with the Minimum Distance Separation Formulae, as required.*

As previously mentioned, the application does not constitute development as no new lots are being created. As such Sections 3.4.2 a) ii), iii), and iv) do not apply. While Section 3.4.2 a) i) also refers to new lots, and technically does not need to be applied to the application, Staff are satisfied that both parcels can be serviced by private sanitary and water services, subject to the recommendations of the Hydrogeological Assessment being fulfilled.

Section 2.4.3 of the Official Plan speaks to intensification and infill, however as this application does not constitute the creation of a lot, Staff do not consider the proposal to be infill.

3.4.3 Design Guidelines

3.4.3.1 General

- a) Development in Rural areas should be consistent with the placement and rural character of the existing built form.*
- b) Community facilities and institutional uses should place parking areas to the side or rear of the building and screen them from view.*
- c) The construction of public utilities will be in keeping with the character of adjacent dwellings and landscape features.*
- d) Green building technologies will be encouraged, including reference to Leadership in Energy and Environmental Design (LEED) as promoted by the Canada Green Building Council.*

3.4.3.2 Residential

- a) *Orient to streets and open space wherever possible*
- b) *Provide front porches or covered entrances*
- c) *Not have garages that occupy more than 50% of the main building wall*
- d) *Incorporate the planting of mature trees and shrubs*
- e) *Use landscaping features to clearly define driveway entrances; and*
- f) *Where proximate to the Lake Erie shoreline, have architectural treatment and landscaping that is compatible with the natural setting of the Lake Erie shoreline*

As no structures are proposed at this time, Staff cannot comment on the design, however the applicant should be aware of these policies when a building permit is submitted.

3.4.4 Consents to Sever

It is the intent of this Plan to preserve and encourage the growth of viable agricultural industries, particularly for farming, forestry and the conservation of plant and wildlife. The severance of lands designated Rural may be permitted subject the following policies:

- a) *Severances for the purpose of a new rural residential dwelling provided:*
 - i. *The proposed lots are designed to retain natural features and vegetation;*
 - ii. *Each new lot shall be approximately 0.4 hectares, unless additional land area is required to support a well and a septic system, and protect surface and ground water features; and,*
 - iii. *For multiple residential development proposals of three lots the minimum lot size shall be 1 hectare unless it is determined through a hydrogeological study that a smaller lot size will adequately support private water and sewage systems and protect surface and ground water features.*
- b) *Severances that are required for reasons other than the creation of a separate lot may be permitted such as for minor boundary adjustments, easements or rights- of-way or any other purpose that does not create a new lot.*
- c) *In addition to the considerations in Section 3.4.4 a), applications for new lots or consents shall meet the following requirements:*

- i. For agriculture-related uses and other rural uses, the amount and availability of vacant lots of record in the areas outside of the Hamlets of the municipality are considered and the need for the additional lot demonstrated;*
- ii. The new lot does not contribute to the extension or expansion of strip development;*
- iii. The new lot is located on an opened and maintained public road;*
- iv. The feasibility of sustainable private services is demonstrated through appropriate technical studies;*
- v. The lot is suitable in terms of topography, soils, drainage, erosion, lot size and shape for the use proposed;*
- vi. Road access to the new lot does not create a traffic hazard because of limited sight lines on corners, or grades, or proximity to intersections; The proposed use will be compatible with surrounding uses;*
- vii. The proposed use will be compatible with surrounding uses;*
- viii. The proposed use will not result in development which would preclude or hinder the establishment of new mineral aggregate operations.*
- ix. The new lot shall meet the minimum distance separation formulae;*
- x. The new lot for residential purposes, as permitted by Section 3.4.4 must be separated from existing livestock operations by the distance determined by the minimum distance separation formulae; and*
- xi. For agriculture-related uses and other rural uses, a maximum of three new non-residential lots are created on the property being severed.*

Given that Staff do not consider the application to be development, many of the lot creation policies do not apply such as Sections 3.4.4 a) ii) and iii) and Section 3.4.4 c), as these policies only apply to new lots. Staff still have regard for the smaller sized lots and recognize that, while they do not meet the current requirement under the OP, the two proposed lots are larger than the legally existing six lots. The two larger lots align closer with the OP.

Staff are still of the opinion that the natural heritage features are not negatively impacted by the proposed application. The Significant Woodland is currently fragmented by the existing lot lines between the six existing lots, whereas, should the application be approved, the fragmentation will be limited to two lots which will result in less development potential on the subject lands.

Finally, Section 3.4.4 b) provides for severances that are required for reasons other than the creation of a separate lot may be permitted such as for minor boundary adjustments.

Planning Act Criteria for Giving of Consent

Staff has included the criteria for determining whether a provisional consent is to be given under Section 53 (12) of the Planning Act, which refers to the criteria under Section 51 (24).

(24) 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,

- a) *the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;*
 - The application has regard to the matters of provincial interest under Section 2 of the Act. Staff are confident that ecological features are being protected as the proposal results in less fragmentation of the existing feature.
 - The severed and retained lot will be adequately serviced through the implementation of the recommendations of the Hydrogeological Assessment through a development agreement.
- b) *whether the proposed subdivision is premature or in the public interest;*
 - The proposal is not considered premature as it proposes changes to existing lots.
- c) *whether the plan conforms to the official plan and adjacent plans of subdivision, if any;*
 - The proposal conforms to the policies of the Official Plan as boundary adjustments are permitted under Section 3.4.4 b).
- d) *the suitability of the land for the purposes for which it is to be subdivided;*
 - The lands are currently made up of multiple existing lots. While the applicant has indicated that it may be possible to build on 3 of the lots, it was deemed more practical for them to build on 2. As such, Staff are of the opinion that lands are suitable for this type of application.
- e) *if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;*
 - Not applicable.

- f) *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;*
- Not applicable
- g) *the dimensions and shapes of the proposed lots;*
- The dimensions and shapes have been addressed through the minor variance applications, which staff have no concerns with. It has been determined that the size of the lots is consistent with the neighborhood and can support private services.
- h) *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 currently no restrictions affecting the subject land. Staff have included several conditions that the applicant will need to address prior to a certificate being issued. These conditions will address servicing for the dwelling and the formal merging of the existing lots.
- i) *conservation of natural resources and flood control;*
- Staff recognize that the subject lands are impacted by a natural heritage feature, however, the proposed application will result in less fragmentation and will result in less development potential in the future. A grading plan will be required at the time of the building permit to ensure that the lands drain appropriately.
- j) *the adequacy of utilities and municipal services;*
- There are no municipal services affecting this area, the lots will be serviced privately and it has been demonstrated through a hydrogeological study that the lots are of sufficient size to accommodate septic systems.
- k) *the adequacy of school sites;*
- No new lots are being created, as such, this criteria is not applicable.
- l) *the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;*
- Not applicable.
- m) *the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and*
- Not applicable.
- n) *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 or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).*

- Not applicable.

Additional Information

Staff have provided an updated zoning analysis with regard to the Environmental Conservation layer below.

The subject property is partially impacted by an Environmental Conservation Layer, which is comprised of a Significant Woodland. Section 36.3 a) of the Zoning By-law States:

- a) *Notwithstanding the permitted uses in the applicable underlying zones shown on the Maps in Section 39, where a lot is also subject to an Environmental Conservation Layer, no uses and no building or structure or an expansion to an existing building or structure shall be permitted until an Environmental Impact Study (EIS), in accordance with the City, Regional Municipality of Niagara or Niagara Peninsula Conservation Authority, as amended from time to time, and other studies that may be required by the City based on approved guidelines or terms of reference are approved. The requirement for an EIS may be scoped or waived in accordance with the EIS guidelines. The uses permitted in Section 36.2 may be permitted subject to a scoped EIS in accordance with the EIS guidelines.*

The EC layer is an overlay on top of the existing LR Zoning and the permitted uses of the LR zone are applicable, subject to meeting the EIS criteria. Staff have reviewed the Environmental Impact Study criteria in the Official Plan, as well as the Region's EIS guidelines and have concluded that an EIS is not required for this application for the following reasons.

Section 4.1.2.2 b) ix) a) of the Official Plan states:

- ix. *The required scope and/or content of an EIS may be reduced in consultation with the appropriate agencies where;*
 - a) *The environmental impacts of the development are thought to be limited*

Planning Staff are satisfied that the proposed application does not constitute development, and the boundary adjustment is considered to be minor as it is consolidating six lots into two. There are currently three existing lots that have frontage on Firelane 3 that could be developed, should this application not be approved, and Staff view this application as a means of providing less development potential on the subject lands in the future.

The Regions criteria for waiving an EIS provides for the following:

During the initial screening, it shall be determined that a proposed development is eligible for waiving if it meets all of the following conditions:

- Proposed development is located outside of natural heritage and hydrologic features, unless the proposed development is an existing lot of record in a woodland;*
- Proposed development is considered small-scale non-agricultural development or small/medium-scale agricultural development (refer to Table 2A and 2B);*
- Proposed development will not significantly alter existing surface water flow direction, quantity or quality; and*
- Proposed development is not located within an NPCA regulated area.*

The subject lands comprise existing lots of record in a woodland and, according to Table 2A, the construction of a house on an existing lot of record is considered small-scale. Any development on the subject lands is required to submit a grading plan at the building permit stage that demonstrates that the construction will not significantly alter existing water flow. Finally, a small portion of the north-west corner of the subject lands is impacted by a buffer to an NPCA regulated feature, however the feature does not exist on the site and the NPCA has provided comments stating that they have no concerns.

Furthermore, the Regions EIS Guidelines state the following;

If the proposed development is eligible for waiving, the requirement to complete an EIS may be waived if the development meets one or more of the following waiving criteria:

- The proposed development is outside the waiving zone required for natural heritage features (refer to Table 3 for waiving zones and Appendix A - Examples A1 and A2 for illustrated examples of this criteria).*
- The proposed development is within the waiving zone, separated from natural heritage feature(s) by a road or existing development (refer to Table 3 and Appendix A -Example B).*
- The proposed development is within the waiving zone and is a re-development wholly contained within an existing footprint, or a re-development with a minor addition³ to the existing footprint which maintains a >15 m buffer from the natural heritage feature, or is a re-development with a major addition to the existing footprint which extends away from the feature (refer to Table 3 and Appendix Example C).*
- The proposed development is within the waiving zone and is a minor addition to an existing structure which maintains a >15 m buffer from the natural heritage feature, or is a major addition to an existing structure which extends away from the feature (refer to Table 3 and Appendix A- Example D).*
- The proposed development area is for a single detached dwelling, amenity area, access, private sewage disposal system, and accessory structure if required within an existing lot of record in a woodland (refer to Appendix A-Example E) .*

The fifth point in the above section states that a single detached dwelling with additional amenities would be permitted on the subject lands without the need for an EIS. This

means that, as the lands exist now, three detached dwellings would be permitted on each lot of record fronting Firelane 3 without the need for an EIS. As such, Staff are of the opinion that an EIS is not required for this application as it will result in less development of the subject lands in the future.

Staff are satisfied that an EIS is not required as this application does not constitute development, results in less development potential of the subject lands and meets the City's and Regions criteria for waiving.

Given the information provided, Staff still support this application and recommend that it be approved under the recommendation attached as Appendix A. Staff have found that the lots have not merged and that the application proposes a consolidation of six existing lots of record into two. This is regarded as a minor boundary adjustment and does not constitute formal development or the creation of a new lot. The application has regard for the natural heritage feature as it will result in less fragmentation and development potential.

Prepared by,

A handwritten signature in black ink, appearing to read "Chris Roome", with a long horizontal flourish extending to the right.

Chris Roome, MCIP, RPP
Planner

Submitted by:

A handwritten signature in black ink, appearing to read "Denise Landry", with a long horizontal flourish extending to the right.

Denise Landry, MCIP, RPP
Chief Planner

Appendix A

Recommendation:

Given the information above, Planning Staff recommends application B05-24-PC be **granted** subject to the following conditions:

1. That the applicant provides the Secretary-Treasurer with the deeds in triplicate for the conveyance of the subject parcel or a registrable legal description of the subject parcel, together with a paper copy and electronic copy of the deposited reference plan, if applicable, for use in the issuance of the Certificate of Consent.
2. That a final certification fee of \$240 payable to the City of Port Colborne is submitted to the Secretary-Treasurer.
3. That the applicant signs the City of Port Colborne's standard "Memorandum of Understanding" explaining that development charges and cash-in-lieu of the dedication of land for park purposes, based on an appraisal, at the expense of the applicant, wherein the value of the land is to be determined as of the day before the issuance of a building permit, is required prior to the issuance of a building permit pursuant to Section 42 of the Planning Act. R.S.O 1990, as amended.
4. That Lot 33, Part of Lot 32, Lot 57 and Part of Lot 58 be merged in title to create Part 2.
5. That Lot 31, Part of Lot 32, Lot 59 and Part of Lot 58 be merged in title to create Part 1.
6. That the owner enter into a Development Agreement to implement the recommendations of the Hydrogeological Assessment, prepared by Terra-Dynamics Consulting Inc. (dated September 22, 2021)
7. That a Stage 1 and 2 Archaeological Assessments be completed by a licensed professional archaeologist in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists. Required archaeological assessments shall be submitted to the Province for review. No demolition, grading or other soil disturbances shall take place on the property until the Province has verified that the required archaeological assessment report(s) have met licensing and resource conservation requirements.
8. That minor variance applications A02-24-PC and A03-24-PC be approved.
9. That all conditions of consent be completed by April 24th, 2026.

For the following reasons:

The application is consistent with the Provincial Policy Statement and conforms to the Growth Plan for the Greater Golden Horseshoe, the Regional Official Plan, City of Port Colborne Official Plan, and will also comply with the provisions of Zoning By-law 6575/30/18, as amended.