



## Town of Niagara-on-the-Lake

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**REPORT #:** CDS-23-223 **COMMITTEE DATE:** 2024-03-21  
**REPORT TO:** Committee of Adjustment **DUE IN COUNCIL:** N/A  
**SUBJECT:** Consent Application B-27/23 – 298 Niven Road

### 1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 Consent Application B-27/23 for 298 Niven Road be refused.

### 2. EXECUTIVE SUMMARY

Staff have received a Consent Application submitted under Section 53(12) of the *Planning Act* proposing to sever a residence surplus to a farming operation as a result of a farm consolidation. Town Staff have reviewed the application and consider it to not meet applicable planning legislation and policies.

### 3. PURPOSE

The applicant is proposing the severance of Part 2 (rural residential lot) as a residence surplus to a farming operation as a result of farm consolidation. Part 3 would be retained for continued legal access off of Niven Road for the agricultural lot. Part 4 (agricultural lot) would be retained for continued agricultural purposes. All existing buildings on the subject lands will be retained.

The application drawing is attached as **Appendix I** to this report.

### 4. BACKGROUND

#### 4.1 Site Description and Surrounding Land Uses

The subject lands are known municipally as 298 Niven Road, lying on the west side of Niven Road, south of Lakeshore Road, in the agricultural area of the Town. The location of the subject lands is shown on **Appendix II** to this report.

Part 2 is proposed to have an area of 6,010.8 square metres and a frontage of 15.1 metres on Niven Road. Part 1 currently contains an existing one-storey single-detached dwelling serviced by municipal water and a private septic system.

Part 3 has an area of 808 square metres and 13 metres of frontage on Niven Road. This right-of-way currently has an access driveway in benefit of the two dwellings at 280 and 298 Niven Road, and for continued access to Part 4 (agricultural lot) through Niven Road.

Part 4 is proposed to have an area of 16.9 hectares and a frontage of 20.14 metres on Wall Road. Part 4 contains agricultural buildings and three farm help houses that are proposed to

be retained. The lands would have continued access from Niven Road through Part 3, the right-of-way.

The surrounding lands are characterized by agricultural and rural residential uses.

#### **4.2 Previous Applications**

Consent Applications B-25/23 and B-26/23 were made to facilitate the severance of a proposed surplus farm dwelling (Part 1, 280 Niven Road) and to facilitate the creation of a legal access (Part 3) in benefit of the proposed rural residential lots and for continued access to the agricultural lot off Niven Road (Part 4). These applications were provisionally approved by the Committee of Adjustment on November 16, 2023.

#### **5. DISCUSSION / ANALYSIS**

Section 3(5) of the *Planning Act, R.S.O. 1990, c. P.13* states that a decision of Council, in respect to any planning matter, shall be consistent with the Provincial Policy Statement and conform with the Provincial Plans.

Section 53(12) of the *Planning Act* states that Council, in determining whether a provisional consent is to be given, shall have regard to the matters under Section 51(24), and that conditions of consent may be imposed as set out in Sections 51(25), 51(26) and 51.1.

The Provincial Policy Statement (PPS) (2020) designates the subject lands as being within a "Prime Agricultural Area." The Greenbelt Plan (2017) designates the subject lands within "Protected Countryside", and more specifically, a "Specialty Crop Area (Niagara Peninsula Tender Fruit and Grape Area)." The subject lands are designated "Specialty Crop Area" in the Niagara Official Plan (2022) and "Agricultural" in the Town's Official Plan (2017 consolidation, as amended).

Section 2.3.4.1 of the PPS, Section 4.6.1(f) of the Greenbelt Plan, Section 4.1.5.2 of the Niagara Official Plan (NOP), and Section 7.4(4)(e) of the Town's Official Plan permit the severance of a residence surplus to a farming operation as a result of a farm consolidation, subject to criteria identified within the respective planning documents.

The following is a summary of relevant policies from the aforementioned planning documents permitting the severance of a surplus farm dwelling as a result of farm consolidation:

- The residential use must have existed before the Greenbelt Plan came into effect;
- The surplus farm dwelling must be habitable;
- The severance must be limited to a minimum lot size needed to accommodate the use, including appropriate sewage and water services, which the Region has determined to be 1 acre;
- A new dwelling is prohibited in perpetuity on the remaining farmland;
- The new residential lot is located to minimize the impact of the remaining farm operation;
- The owner must operate an existing farm within the Town of Niagara-on-the-Lake; and,
- The new lot must comply with the Minimum Distance Separation Formulae.

A building permit (BP4080) was obtained by the property owner in 2000 for the construction of the dwelling located at 280 Niven Road. At that time, an undertaking was signed between the Town and owner, which established that the dwelling at 298 Niven Road was a farm help house. It is standard Town practice, and consistent with Town policies, that any existing dwellings would have needed to be considered as farm help houses in order to allow an additional dwelling on the property.

Section 3.17 of Zoning By-law 500A-74 (as amended) contains provisions for the number of dwellings on one lot. Section 3.17(b) states that:

*In a Rural (A) Zone where a lot has an area of at least 8.09 hectares (20 acres) and is used only for farming, one additional dwelling may be erected, altered or maintained and for each additional 20.24 hectares (50 acres) used only for farming, one further additional dwelling may be erected, altered or maintained; providing that such additional dwelling shall be used only for the accommodation of persons necessary to the operation of such farm on a full-time basis.*

The subject lands are approximately 18 hectares (44 acres) in area. When the dwelling at 280 Niven Road was constructed, the above provision was in force and effect. Accordingly, the dwelling at 280 Niven Road would have only been permitted to be constructed provided that the other dwellings, including the dwelling at 298 Niven Road, were to be used as farm help accommodations.

Given the applicable planning policies and provisions, Staff consider the dwelling at 298 Niven Road to be a farm help house.

Town Staff do not consider the application to be consistent with the PPS, or in conformity with the requirements of the Greenbelt Plan, the Niagara Official Plan, and the Town Official Plan.

## **5.1 Town, Agency and Public Comments**

This application was circulated to all appropriate Town Departments and external agencies, and public notice of the application was provided as required by the *Planning Act*. The following responses were received:

### Town Departments

Building – No objection.

Finance – No objection.

Fire and Emergency Services – No objection.

Heritage – No objection. Archaeological assessment may be required for any future development.

Operations – No objection. Should Committee wish to approve the Consent, conditions would be requested regarding service interconnection and installation of a water service lateral.

### Agencies

Enbridge Gas – No objection.

Hydro One – No objection.

Niagara Peninsula Conservation Authority (NPCA) – No objection. Future development proposals shall be submitted to the NPCA for review and approval.

Niagara Region – Regional Staff do not support the proposed Consent application based on non-conformity to the applicable policies for surplus farm dwelling consents in the PPS, Greenbelt Plan and NOP.

#### Public

No public comments have been received at the time of preparation of this report.

## **6. STRATEGIC PLAN**

The content of this report supports the following Strategic Plan initiatives:

### Pillar

3. Enrich Community Assets, Environment, & Infrastructure

### Priority

3.2 Environment

### Action

3.2 a) Sustainable Natural Environment

## **7. OPTIONS**

The Committee may approve, refuse or modify the requested Consent and/or conditions.

## **8. FINANCIAL IMPLICATIONS**

Not applicable.

## **9. ENVIRONMENTAL IMPLICATIONS**

The lot lines of Part 2 are proposed to avoid impacts to the floodplain and watercourse, as confirmed by the NPCA.

## **10. COMMUNICATIONS**

Once the Committee of Adjustment makes a decision on the application, notice of the decision will be given as required in the *Planning Act*. The decision of the Committee is subject to a 20-day appeal period following notice of the Committee's decision. If no appeals are received during the appeal period, the decision of the Committee is final.

Changes to provincial legislation have been made by way of Bill 23 and third-party appeals from private property owners are no longer permitted.

## **11. CONCLUSION**

Community & Development Services Staff recommend refusal of Consent Application B-27/23, as the application does not meet *Planning Act* requirements, is inconsistent with the Provincial Policy Statement and does not conform with the Greenbelt Plan, the Niagara Official Plan and the Town Official Plan.

## **12. PREVIOUS REPORTS**

- Consent Application B-25/23 – 280 Niven Road (Surplus Farm Dwelling)

- Consent Application B-26/23 – 282 Niven Road (Easement)

### 13. APPENDICES

- Appendix I – Application Drawing
- Appendix II – Location Map

Respectfully submitted:

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**Reviewed by:**



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