



Department of Community
& Development Services
Telephone (905) 468-3266
Facsimile (905) 468-0301

The Town of Niagara-On-The-Lake

1593 Four Mile Creek Road
P.O. Box 100
Virgil, Ontario
L0S 1T0

Report:	CDS-21-024	Committee Date:	September 27, 2021
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Due in Council:	September 27, 2021
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Report To:	Lord Mayor & Council
Subject:	Consent Application B-06/21 - 631 Lincoln Avenue Proposed Appeal to the Ontario Land Tribunal

1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 Council appeal the decision of the Town's Committee of Adjustment to approve Consent Application B-06/21 for 631 Lincoln Avenue to the Ontario Land Tribunal.

2. PURPOSE / PROPOSAL

The purpose of this report is to obtain Council's direction with respect to a proposed appeal to the Ontario Land Tribunal (OLT), formerly named the Local Planning Appeal Tribunal (LPAT), of a decision by the Town's Committee of Adjustment (COA) to approve Consent Application B-06/21 (the "Application") for 631 Lincoln Avenue.

3. BACKGROUND

The subject lands are located on the south side of Lincoln Avenue, east of Airport Road in the agricultural area of the Town.

The Application proposes a boundary adjustment to convey Part 2 (2.37 acres/9,606 square metres in area), containing a geothermal system, tennis court, shop/barn, pond and driveway. Part 2 is to merge with Part 3 (1.37 acres/5,555 square metres in area) containing a dwelling, accessory building and septic system and known municipally as 679 Lincoln Avenue. Part 1 (45.54 acres/18.43 hectares in area), containing an office/shop and equipment barn and known municipally as 631 Lincoln Avenue, is to be retained for continued agricultural use.

The Application is submitted as a minor boundary adjustment or lot addition and must satisfy Provincial, Regional and Town planning policies and criteria.

Based on a review of materials submitted with the Application and relevant planning policies, Staff Report COA-26-2021 was submitted to the COA for consideration at their May 20, 2021 meeting. The Staff recommendation was for the refusal of the

Application. At the May 20, 2021 Committee meeting, the agent requested deferral of the Application to provide additional information and respond to questions in the Staff Report. The COA granted the deferral.

Subsequently, the agent (NPG Planning Solutions) submitted a Planning Justification Report Addendum containing additional information with respect to the Application. Staff reviewed the Addendum and submitted Staff Addendum Report COA-58-2021 to the COA for consideration at their September 16, 2021 meeting. Staff maintained their original position and recommended refusal of the Application.

The Staff Addendum Report No. COA-58-2021 (including the original Staff Report No. COA-26-2021, the NPG Addendum Report and Niagara Region comments) is attached as **Appendix I**.

The COA has been delegated approval authority from Council to make decisions on such matters as consent and minor variance applications. At the COA meeting held on September 16, 2021, the COA granted provisional approval of the Application subject to conditions. Council has requested that they be notified of Committee decisions that differ from the recommendations of Staff.

The Minutes of the COA meeting held on September 16, 2021 are attached as **Appendix II** to this report. The Decision document, including the conditions of provisional approval, is attached as **Appendix III** to this report.

4. DISCUSSION / ANALYSIS

The Provincial Policy Statement (PPS) permits boundary adjustments, subject to certain criteria. The PPS also directs that Prime Agricultural Areas be protected for long-term use for agriculture and that Specialty Crop Areas be given the highest priority of protection.

The policies of the Greenbelt Plan (2017), the Niagara Region Official Plan and the Town's Official Plan permit minor boundary adjustments, subject to policies and criteria identified within these documents.

The COA decision to approve the Application is contrary to the Town Planning Staff recommendation. Staff maintain concerns with the Application based on conformity/compliance with the purpose and intent of Provincial, Regional and Town planning policies for agricultural areas and minor boundary adjustments. Staff do not agree with the planning opinions offered by NPG Planning Solutions or the comments of the Niagara Region dated August 20, 2021.

The Application satisfies the basic policy criteria of the Greenbelt Plan: a minor lot adjustment or boundary addition may be permitted provided no new residential lot is created and there is no increased fragmentation of key natural heritage features or key hydrologic features. The Greenbelt Plan and the Town and Region Official Plans contain additional policies that such applications comply with other policies of the

respective plans. Staff are of the opinion that the Application does not suitably address policies to preserve prime agricultural lands (specialty crop areas).

The following points summarize the planning policy reasons contained in the Staff Reports to the COA, which recommended refusal of the Application and also provide the rationale for the proposed appeal to the Ontario Land Tribunal:

1. The majority of Part 2 could be used in the future for agricultural, agriculture-related or on-farm diversified uses.
2. The proposed boundary adjustment to increase the rural residential lot area to 3.74 acres (1.514 hectares) is not considered minor. The past and proposed consents have been incrementally adding to the size of the residential lot, cumulatively resulting in the removal of 2.74 acres of agricultural land in addition to the original 1-acre farm retirement lot.
3. The interpretation of the agent that residential lots in the agricultural area can continue to expand with no limitations on lot size or consideration of potential loss of unique agricultural land is not supported. Residential lots in the agricultural area should be limited to a minimum size needed to accommodate the use and wastewater and water servicing requirements.
4. The applicant has acknowledged that the geothermal system would not fit within the legal boundary of the residential property of which it serves (Part 3). Therefore, the applicant installed the system on the abutting separate agricultural property owned by the applicant's family. The location of the geothermal system (as well as the pond, shop/barn, tennis court and driveway that all serve the residential use) on the agricultural property is cited as the technical reason for the boundary adjustment. While Staff generally support the use of renewable energy sources, the choice to use a renewable energy system does not outweigh land use planning policies.

5. Strategic Plan

☒ **Protect Distinctive Community Assets**

- ☒ Preserve unique community elements
- ☐ Close gap on capital investments
- ☐ Recognize the importance of tourism in Niagara-on-the-Lake
- ☐ Other

☐ **Not Applicable**

6. OPTIONS

Council may direct Staff to either file an appeal to the Committee of Adjustment decision or choose not to appeal the decision for this Application.

7. FINANCIAL IMPLICATIONS

There are costs associated with retaining the services of legal counsel to support

Council throughout the appeal process of the COA decision. Town Planning Staff would also be involved in the appeal process. Legal services include preparation for and attendance at the OLT hearing.

8. COMMUNICATIONS

Should Council support the recommendation to appeal the COA decision for Consent Application B-06/21, Staff will file an appeal with the OLT and provide the Town solicitor with the file material. The deadline for filing an appeal is October 7, 2021. The applicant's agent has been advised of this report to Council for consideration of an appeal.

9. CONCLUSION

In the opinion of Town Planning Staff, the decision of the COA is inconsistent with the PPS and does not conform to the Greenbelt Plan with respect to policies that provide for a boundary adjustment in the specialty crop agricultural area. As such, approval of the proposal would not comply with Section 3(5) of the *Planning Act*, which requires decisions regarding planning matters to be consistent with the PPS and conform with Provincial Plans. Further, Staff is of the opinion that the decision does not conform to the Regional Official Plan and Town Official Plan.

Respectfully submitted,



Mark Iamarino, MCIP, RPP
Senior Planner



Rick Wilson, MCIP, RPP
Manager of Planning



Craig Larmour, MCIP, RPP
Director, Community and
Development Services



Marnie Cluckie, MS.LOD, B.ARCH, B.ES
Chief Administrative Officer



The Town of Niagara-On-The-Lake

Telephone (905) 468-3266
Facsimile (905) 468-2959

1593 Four Mile Creek Road
P.O. Box 190
Virgil, Ontario
L0S 1T0

Report:	COA-58-2021	Committee Date:	September 16, 2021
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Report To:	Committee of Adjustment
Subject:	631 Lincoln Avenue
	Addendum Report - Consent Application B-06/21

1. RECOMMENDATION

It is respectfully recommended that Consent Application B-06/21 for 631 Lincoln Avenue be refused.

2. PURPOSE / PROPOSAL

The application proposes a boundary adjustment to convey Part 2 (2.37 acres/9,606 square metres in area) containing a geothermal system, tennis court, shop/barn, pond and driveway. Part 2 is to merge with Part 3 (1.37 acres/5,555 square metres in area) containing a dwelling, accessory building and septic system and known municipally as 679 Lincoln Avenue. Part 1 (45.54 acres/18.43 hectares in area) containing an office/shop and equipment barn and known municipally as 631 Lincoln Avenue is to be retained for continued agricultural use.

Appendix I to this report shows Detail 'A' which is an enlargement on the submitted surveyor sketch illustrating the north portion of the lands and specifically Part 2 and Part 3.

3. BACKGROUND

Staff report COA-26-2021 respecting this application was submitted to the Committee for consideration at their May 20, 2021 meeting. The Staff recommendation was for the refusal of the application. The original Staff report **COA-26-2021 is attached** to this Addendum report and should be referenced for a complete review of the application. At the May 20, 2021 Committee meeting, the agent requested deferral of the application to provide additional information and respond to questions in the report. The Committee granted the deferral.

4. DISCUSSION / ANALYSIS

4.1 Applicant's Planning Justification Report Addendum

The applicant submitted a Planning Justification Report Addendum (dated August 2021) prepared by NPG Planning Solutions which is attached as **Appendix II** to this

report. The NPG report includes the following rationale in support of the application:

- the geothermal system, barn and pond are permitted uses in the Zoning By-law
- the geothermal system services the dwelling on the abutting 679 Lincoln Avenue residential property (Part 3) and was constructed in the only viable location with sufficient area that would not impact agricultural land in production
- the applicant's family owned the adjacent land parcel (Parts 1 & 2) and chose to install the geothermal system at 631 Lincoln Avenue because there was a location available in proximity to the house
- the applicant is undertaking estate planning and ensuring the barn, pond and geothermal system are on the same lot as the house that they serve is the appropriate decision for both the residential property and the farm
- the Regional Official Plan does not limit or restrict the size of existing lots that may be modified as a result of a boundary adjustment and the 1 acre (0.4 hectare) lot size in the Region's Official Plan applies only to newly created lots
- while a one (1) acre lot size may have been common for residential parcels in the agricultural area, geothermal systems are quite large and it would be difficult to accommodate such a system on a one (1) acre site
- the cumulative impact of boundary adjustments is not relevant
- there are no negative impacts as a result of the proposed boundary adjustment since the geothermal system, pond and barn do not use land that is currently being cultivated and there were never any crops being cultivated in the area

4.2 Niagara Region Comments

Niagara Region Planning and Development Services provided comments (dated April 30, 2021) on the initial circulation and identified some areas of concern and questions. The Region has provided additional comments (dated August 20, 2021) in response to the NPG Addendum. The Regional correspondence is included in the Committee agenda. The Region now advises that, given the previous and additional information, Regional Staff are satisfied that the general intent of Regional and Provincial policies are satisfied for the boundary adjustment, as proposed.

4.3 Town Planning Staff Comments

Town Staff maintain concerns with the application based on conformity/compliance with the purpose and intent of Provincial, Regional and Town planning policies for agricultural areas and minor boundary adjustments. Staff do not agree with the planning opinions offered by NPG Planning Solutions or the comments of the Niagara Region dated August 20, 2021.

The application satisfies the basic policy criteria of the Greenbelt Plan - a minor lot adjustment or boundary addition may be permitted provided no new residential lot is created and there is no increased fragmentation of key natural heritage features or key hydrologic features. The Town and Region Official Plans contain an additional requirement that such applications comply with other policies of their respective Official Plan. Staff are of the opinion that the application does not suitably address policies to preserve prime agricultural lands (specialty crop areas).

Appendix I

The majority of Part 2 could be used in the future for agricultural, agriculture-related or on-farm diversified uses. The proposed boundary adjustment to increase the rural residential lot area to 3.74 acres (1.514 hectares) is not considered minor. The interpretation of the agent that residential lots in the agricultural area can continue to expand with no limitations on lot size or consideration of potential loss of unique agricultural land is not supported.

The applicant has acknowledged that the geothermal system would not fit within the legal boundary of the residential property (Part 3) and it was therefore installed on the abutting land. The location of the geothermal system (as well as the pond, shop/barn, tennis court and driveway that all serve the residential use) on the agricultural property is cited as the technical reason for the boundary adjustment. The choice to use a renewable energy system does not outweigh land use planning policies.

The applicant could consider an easement over the geothermal system area for access and maintenance. This approach would allow future options for agricultural, agriculture-related or on-farm diversified uses on Part 2.

5. OPTIONS

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

6. 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 are final.

7. CONCLUSION

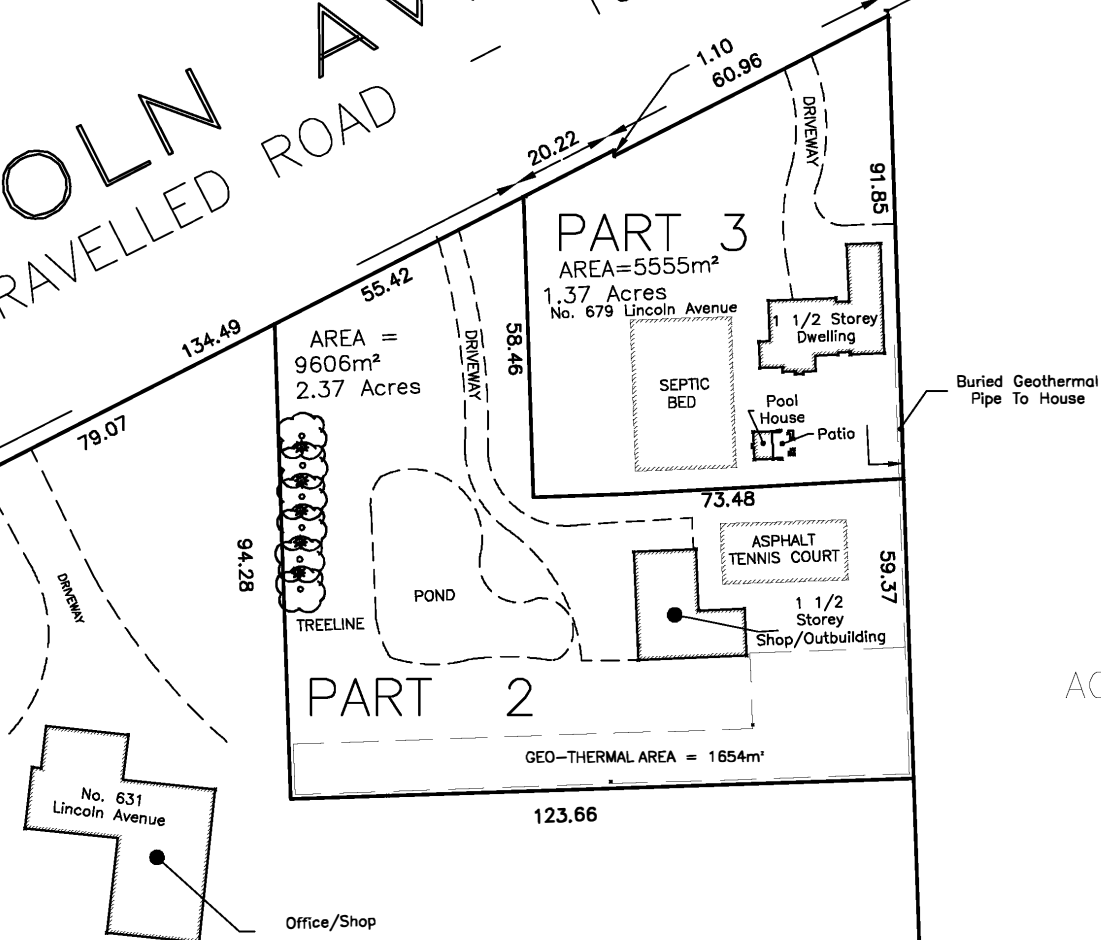
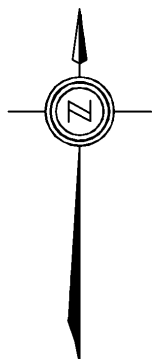
Community & Development Services Staff cannot recommend approval of Consent Application B-06/21 as the application does not meet the *Planning Act* requirements, is not consistent with the Provincial Policy Statement, and does not conform with the Greenbelt Plan, Niagara Region Official Plan and the Town Official Plan.

Respectfully submitted,



Rick Wilson, MCIP, RPP
Manager of Planning

ATTACHMENTS



AGRICULTURAL

AGRICULTURAL

DETAIL 'A'

SCALE 1:1500



Planning Justification Report Addendum

Consent Application B-06/21

631 & 679 Lincoln Avenue
Niagara-on-the-Lake

For: Mr. Waldy Wall

By: NPG Planning Solutions Inc.
4999 Victoria Avenue
Niagara Falls, ON
L2E 4C9

August 2021

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1.0 Introduction

The purpose of this addendum report is to provide additional information with regard to the active application for Consent under File No B-06/21. The application seeks permission for a technical issue to be addressed: to allow an existing geothermal system, barn and pond to be severed from an existing agricultural parcel at 631 Lincoln Avenue, to then merge with an adjacent residential parcel at 679 Lincoln Avenue. It is important to note, the geothermal system, the barn, and pond are all permitted uses in accordance with the Zoning By-law and currently exist on the land. The geothermal system serves the existing residential dwelling at 679 Lincoln Avenue, and was constructed in the only viable location with sufficient area that would not impact agricultural land in production. Mr. Waldy Wall is addressing estate planning; addressing the boundary of the residential property to include the geothermal system is necessary.

This Addendum responds to comments received to date through Staff Report COA-26-2021 and Niagara Region Comments dated April 30, 2021 under File No.: D.06.05.CS-21-0023 and should be read in conjunction with the previously submitted Planning Justification Report (PJR), prepared by NPG Planning Solutions Inc. and dated March 2021.

2.0 Niagara Region Lot Size Policies

Comments received from Niagara Region Planning and Development staff relate to the intent of lot size policies of the Niagara Region Official Plan and whether they were maintained by the proposed boundary adjustment. Based on a review of the Region's policies in general and more specifically under Section 5.B.8 and 5.B.9, the Region's Official Plan does not pose a limit or restriction on the size of existing lots that may be modified as a result of a technical consent resulting in a boundary adjustment. We do acknowledge that the Region applies a suggested size for new lots of 0.4 ha (1 acre) in order to accommodate a new residence and new septic system, however, this size applies only to newly created residential lots. The Regional letter cited various policies related to consents in the agricultural areas; an analysis is provided below.

Policy 5.B.8 states the following (emphasis added):

"In the Unique Agricultural Areas, consents to convey may be permitted only in accordance with the following provisions. Within the Niagara Escarpment Plan Area, the policies of the Niagara Escarpment Plan as amended from time to time shall prevail unless the following policies are more restrictive, then the more restrictive policies shall prevail. Policies for lot creation in local Official Plans can be more restrictive than the following policies and still conform to this Plan.

a) The consent to convey is for an agricultural use where the severed and retained lots are intended for agricultural uses and provided the minimum lot size is 40-acres (16.2 hectares).

b) The consent is for a residence surplus to a farming operation as a result of a farm consolidation, which residence was an existing use as of December 16, 2004, provided that a residential dwelling is not permitted in perpetuity on the retained lot of farmland created by this severance. As a condition of severance, the applicant must have the remnant parcel rezoned to preclude its use for residential purposes.

c) The consent requested is for minor boundary adjustments or easements, complies with other policies in this Plan and does not create a separate lot for a residential dwelling and there is no increased fragmentation of a key natural heritage feature or key hydrologic feature.”

The proposed consent is a minor boundary adjustment; the proposed consent does not create a new lot and there is no fragmentation of either a key natural heritage feature or a key hydrologic feature.

Policy 5.B.8.1 states the following (emphasis added):

“In Good General Agricultural Areas consents to convey may be permitted only in those circumstances set out in the following provisions. Policies for lot creation in local Official Plans can be more restrictive and still conform to this Plan.

- a) The consent to convey is required for existing agriculturally related uses provided the parcel size is limited to the minimum size needed to accommodate the use.*
- b) The consent is for a farm operation supported through a farm business plan and provided that the resulting parcels are both for agricultural use and the size of the resulting farm parcels:
 - i) is appropriate for the farming activities proposed,*
 - ii) is suited to the particular location and common in the area, and*
 - iii) provides some flexibility for changes in the agricultural operation.**

The foregoing includes small lot severances for greenhouses and other intensive forms of agriculture subject to the condition that any new dwellings on the property are allowed only after the greenhouse and other farm buildings have been constructed or substantially completed. It is important that small lot severances for intensive agricultural uses such as greenhouse operations be of a sufficient size so that these uses have ample room for future expansion.

- c) The consent to convey is for a residence surplus to a farming operation as a result of a farm consolidation provided new residential dwellings are prohibited in perpetuity on any vacant remnant parcel of land created by the severance. As a condition of severance the applicant must have the remnant farm parcel rezoned to preclude its use for residential purposes.*

d) The consent is for a lot adjustment for legal or technical reasons such as easements, corrections to deeds, quit claims and minor boundary adjustments which do not result in the creation of a new lot.”

The proposed consent is for a minor boundary adjustment in accordance with Policy 5.B.8c) and 5.B.8.1d). A new residential lot is not being created and there is no fragmentation of the natural heritage features/key hydrologic features as a result of the adjustment. As stated earlier, the geothermal system, the barn, and the pond currently exist on the agricultural lands. These buildings and infrastructure will continue to exist and form part of the residential parcel through the boundary adjustment.

With regard to Policy 5.B.8.1, sub-policy d) is applicable: the lot adjustment through the consent application is required for technical reasons. The geothermal system currently services the existing dwelling however, as existing this system is located on a separate parcel. The barn and pond are utilized by the residential parcel and are located between the geothermal system and the dwelling. The proposed consent will allow the geothermal system to exist on the same lot as the dwelling it provides service to. In addition, given the location of the barn and pond on the property and in relation to the house and the geothermal system, there is a technical and logical need to connect the barn building and the pond infrastructure with the house as there is no boundary adjustment that could be done to include only the geothermal system with the house (please refer to Appendix I - Consent Sketch).

It is our submission that Policy 5.B.9 addresses new residential lot creation. The first words in the policy are “Proposed residential lots ...”. There are seven sub-policies in Policy 5.B.9 which reference either “new lot” (5 sub-policies) or proposed lot (1 sub-policy). The remaining sub-policy speaks to joint road access use. The plain and ordinary reading of Policy 5.B.9 is that it applies to new lots and thus is not applicable to the proposed technical consent.

One (1) acre may have been the common lot size for residential parcels in the agricultural area, however there is a shift as climate change becomes more prevalent. The encouragement of alternative energy systems in agricultural areas requires appropriate lot area to accommodate these systems. Geothermal systems are quite large and it would be difficult to accommodate a geothermal system on a one (1) acre site. The intent of the Region’s policies is not to preclude alternative energy systems in the Unique Agricultural Area. There is no size restriction outlined in any of the Region’s policies regarding the size of lots resulting from boundary adjustments as aforementioned. It is our opinion that the Regional policies related to the intent of lot size have been maintained.

It is important to note that natural gas services do not exist along Lincoln Avenue. Heating for the dwelling would either need to be provided by the geothermal system or by a propane/oil tank with regular deliveries. Mr. Wall has chosen the heating solution (which also provides cooling) with the least environmental footprint ensuring a long-term sustainable heating and cooling system with no carbon footprint.

3.0 Cumulative Impact

There were comments made by both Town staff and Niagara Region staff with regards to the cumulative impact of the historical boundary adjustments at 679 Lincoln Avenue. We acknowledge that there have been two previous boundary adjustments made to 679 Lincoln Avenue and that its current lot size is as a result of previous boundary adjustments, however each planning application must be based on its own merits. Additional commentary provides context for these boundary adjustments.

The first boundary adjustment addressed a minor issue related to construction of the pool house and patio. The second boundary adjustment occurred due to the requirements by Niagara Region to install a new septic system arising from the construction of an addition on the house, increasing the number of washrooms by two. The septic system is also shown on the consent sketch.

The consent sketch shows Part 3 which is the existing house, pool, pool house and septic system. In examining this consent sketch, the location of the septic system can clearly be seen. The location of the septic system set both the west and south boundaries of the lot. As the septic system was a requirement of Niagara Region, this triggered the technical boundary adjustment.

What is important to note as well is that the pool house/patio, as shown on the consent sketch, is at approximately the same location from the southern lot line as the septic system. The first consent, for the pool house/patio should not be an issue as the southern boundary line was determined by the technical consent for the septic system. The septic system was required by Niagara Region due to the addition of two washrooms in the dwelling, requiring a technical consent which established the southern lot line. A review of the location of the southern lot line shows that the pool house/patio would have been included in the area of house created by the boundary adjustment for the septic system.

It is our view that the issue of cumulative impact is not relevant to the review of the proposed consent due to the history of how the previous consents arose. Mr. Wall should not be negated from addressing the current circumstances because the Niagara Region required a new septic system thus triggering a boundary adjustment consent. The pool house/patio consent is not relevant because the southern lot line would have been created by the septic boundary adjustment – again, because of the septic requirements of the Niagara Region.

As indicated in the PJR the impacts of the proposed development have been assessed and it is our opinion that there are no negative impacts as a result of the proposed boundary adjustment. Sizing of the current lot is similar in size to other residential lots in the area, the geothermal system, pond and barn that are proposed to be included in the boundary adjustment are existing and will not use land that is currently being cultivated; lastly based on the letter from Hugh Fraser there is no indication that the boundary adjustment will impact the viability of the existing farm parcel at 631 Lincoln Avenue.

Further, a review of the Town's Official Plan and Niagara Region Official Plan revealed there are no policies related to the cumulative impact of consents in the agricultural area.

4.0 Geothermal System

The geothermal system was installed through a Federal program, which incentivized the installation of geothermal systems in 2009. The installation of the geothermal system did not require a building permit from the Town as it was a Federal program that did not require municipal approvals.

Regional Staff have indicated they support the use of geothermal systems for residential use, however, they are not clear why the system was not originally installed on the residential lot instead of the adjacent agricultural parcel. It is important to note that the geothermal system was installed on agriculturally designated lands and was a permitted use on such lands when it was installed.

The consent sketch clearly shows the limits of the geothermal system. A review of the drawing shows that, as a result of the placement of the house and the septic system, the geothermal system could not be located on the existing lot (Part 3). The width of the system simply does not fit on the existing Part 3 (the residential lot).

Geothermal systems are a very long and large alternative energy system that require space, as such there was no location available for the geothermal system on the residential lot at 679 Lincoln Avenue. A review of aerial photography, the lot size of the existing house, and the location of the house on the lot confirm this. The geothermal system can be seen on recent aerial photography and a review of that imagery confirms that there is no place on the existing residential lot for the geothermal system. The Wall family owned the adjacent land parcel and chose to install the geothermal system at 631 Lincoln Avenue because there was a location available in proximity to the house. When looking at the aerial photography, it is clear that the existing pond and existing site layout are such that the geothermal system was placed in the only viable location to address providing infrastructure for the house, as close to the house as was possible, and ensuring agricultural land was not impacted.

5.0 Aerial Photography – Agricultural Land

It was indicated in the Town Staff report that agricultural land was removed to install the geothermal system and the barn. Aerial photography is included as Appendix II to this Addendum. There were never any crops being cultivated in the area where the geothermal system was installed or where the barn was constructed. The area was used as a dirt bike track for Mr. Wall's children. An image of the dirt bike track from Niagara Navigator is included in this Addendum as Appendix II.

In fact, when Mr. Wall purchased the property, the lands were not in agricultural production. Mr. Wall has planted the lands with grape vines. Prior to this, the lands were fallow as can be seen in photographs showing the agricultural use of Mr. Wall's farm from historic air photography. This information is provided as it is important to acknowledge that Mr. Wall has turned the farm parcel into productive agricultural use with the growing of grapes for wine.

The farm parcel will be 45.54 acres in size should the consent be approved. This is one of the larger farms in Niagara-on-the-Lake. The area where the pond, barn, and geothermal system are located will not be used for agriculture. The opinion of Mr. Fraser, the agricultural specialist, should be referred to in this regard. It is our opinion that the pond, barn, and geothermal system are permitted uses in the Zoning By-law and contemplated by Provincial, Regional and Town policies and the Town's Zoning By-law. Combined with Mr. Fraser's opinion, it is our opinion that the uses are appropriate on the land and were contemplated as the Region and Town developed their policies and zoning. Mr. Wall has implemented permitted uses for agricultural land.

6.0 Conclusion

The pond, barn and geothermal system exist on the land today. The structure and infrastructure (pond, geothermal system) serve the existing house at 679 Lincoln Avenue. Based on the location of the barn and the pond, the only viable location for the geothermal system was where it was located on the property at 631 Lincoln Avenue. Ensuring the barn, pond and geothermal system are on the same lot as the house that they serve is the appropriate decision for both the residential property and the farm. No agricultural lands were removed to install the geothermal system.

This Addendum has addressed the Regional comments and policies on consents for boundary adjustments. It is our opinion that the Regional policies have been satisfied. With regard to cumulative impact, neither the Region nor Town Official Plans have policies and requirements related to cumulative impacts. However, when reviewing the aerial photography, it is clear that the pond, barn and geothermal system are located in proximity to each other and have been sited as close to the house as is reasonably possible given the house location and the septic location. Finally, as the consent history explained earlier shows, Niagara Region required a new septic system and this triggered a technical boundary adjustment due to the area requirements for the new Regionally required septic system.

The Region's policies support alternative energy. With the placement of the house, barn, pond and geothermal system on the lot, in order to integrate the geothermal system on the same lot as the house the consent must include the barn and pond to create an appropriate parcel. The consent for the geothermal system cannot be granted in isolation given the placement of the pond, barn, and geothermal system on the land.

The pond, barn, and geothermal system are permitted uses in Regional and Town policies and the Town's Zoning By-law. The commentary on agricultural land has been provided by Mr. Hugh Fraser and his opinion should be accepted as supportive of the appropriate use of the land for the pond, barn, and geothermal system. Given these uses exist on the land, the farm viability has not been compromised. The lot fabric will not compromise the farm viability; the farm is now producing crops which are grapes for wine.

It is our submission that the PJR and this Addendum have addressed the Regional and Town comments. We request approval of the consent.

A handwritten signature in black ink, appearing to read "ML Tanner". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Mary Lou Tanner, FCIP, RPP

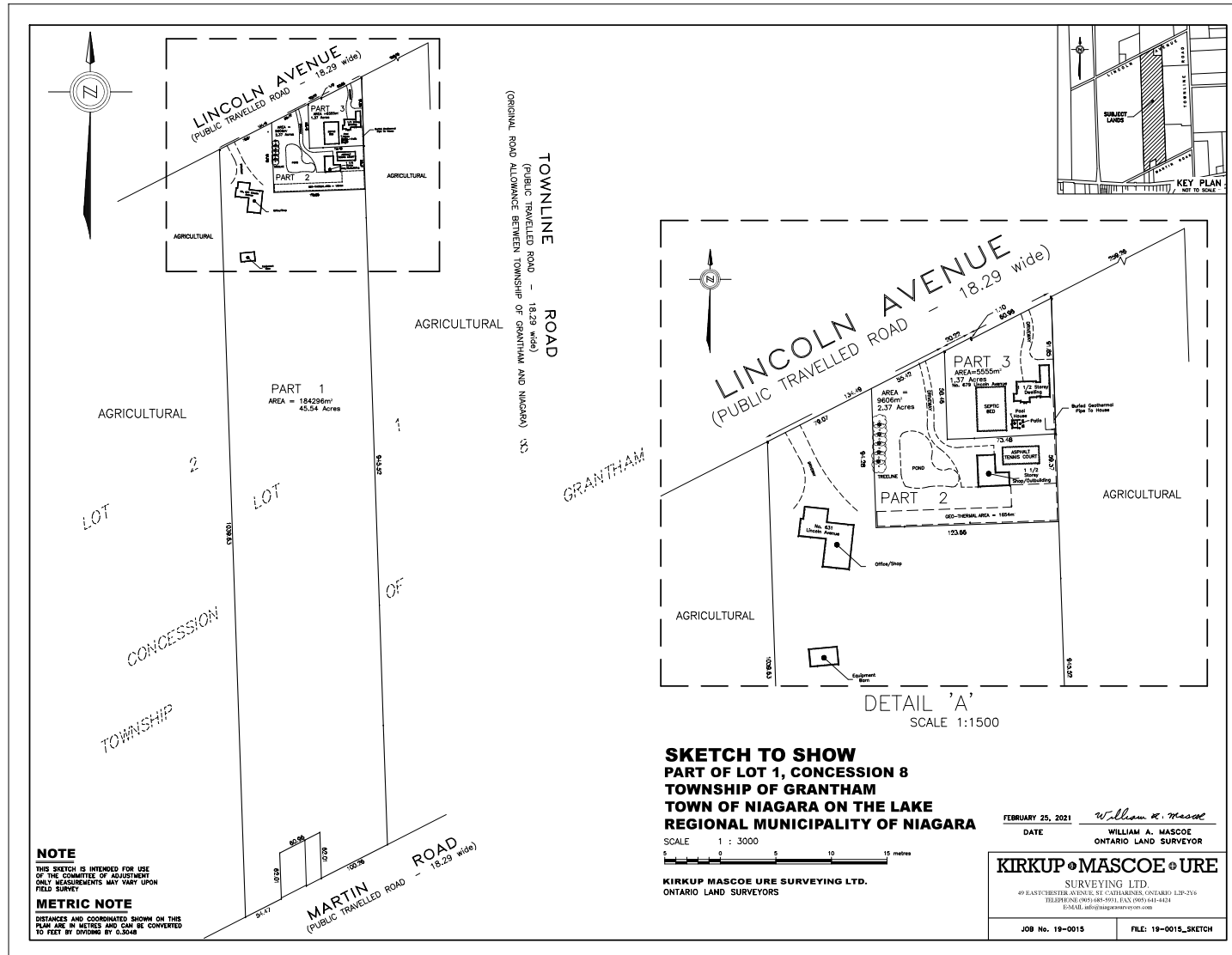
Principal Planner

NPG Planning Solutions Inc.

7.0 APPENDICES

Appendix I	Consent Sketch
Appendix II	Aerial Photography of Site

APPENDIX I – CONSENT SKETCH



APPENDIX II – AERIAL PHOTOGRAPHY





The Town of Niagara-On-The-Lake

Telephone (905) 468-3266
Facsimile (905) 468-2959

1593 Four Mile Creek Road
P.O. Box 190
Virgil, Ontario
L0S 1T0

Report:	COA-26-2021	Committee Date:	May 20, 2021
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Report To:	Committees of Council
Subject:	631 Lincoln Avenue
	Consent Application B-06/21

1. RECOMMENDATION

It is respectfully recommended that:

1.1 Consent Application B-06/21 for 631 Lincoln Avenue be refused.

2. PURPOSE / PROPOSAL

The Application proposes a boundary adjustment by conveying Part 2, a 2.37 acre (9,606 square metre) parcel of land with 55.42 metres of frontage on Lincoln Avenue to be merged with Part 3, a 1.37 acre (5,555 square metre) parcel for residential use. Part 1, the retained lot, would continue to be used for agricultural purposes.

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

3. BACKGROUND

3.1 Site Description and Surrounding Land Uses

The subject lands are known municipally as 631 Lincoln Avenue, lying on the south side of Lincoln Avenue, east of Airport Road in the agricultural area of the Town. The location of the subject lands is shown on **Appendix II** of this report.

Part 2 of the subject lands contains a hobby shop, tennis court, geothermal system, pond and hedgerow. Part 3, known as 679 Lincoln Avenue, contains a single-detached dwelling, pool, pool house and septic system. Part 1 contains a shop with an office, equipment barn, work yard and vineyard. The subject lands are serviced by a private well and septic system.

Surrounding lands are used for agricultural. An automotive storage yard is located to the north.

3.2 Previous Applications

In 1994, the adjacent lot, 679 Lincoln Avenue was created as a 4018 square metre

(1 acre) farm retirement lot through Consent Application B-169/94 submitted by a previous owner. The subject lands and adjacent residential lot have since come under common ownership of the Wall family.

In 2008, Consent Application B-17/08 was approved to permit a boundary adjustment to add 336.4 square metres (0.08 acres) to 679 Lincoln Avenue to accommodate the location of an existing accessory building that was constructed in error over the rear lot line. In 2010, Consent Application B-5/10 was approved to permit another minor boundary adjustment to add 1148.6 square metres (0.28 acres) to 679 Lincoln Avenue to accommodate an upgraded septic system necessary after construction an addition to the existing dwelling.

4. 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* further 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.

Section 2(b) of the *Planning Act* provides that Council, in carrying out their responsibilities under this Act, shall have regard to matters of provincial interest, including the protection of the agricultural resources of the Province.

The Provincial Policy Statement (PPS) (2020) identifies the subject lands as being within a Prime Agricultural Area, and more specifically a "Specialty Crop Area." The PPS directs that Prime Agricultural Areas be protected for long-term use for agriculture, and that Specialty Crop Areas be given the highest priority for protection. The subject lands are designated "Specialty Crop Area (Niagara Peninsula Tender Fruit and Grape Area)" within the Protected Countryside of the Greenbelt Plan (2017), where for a full range of agricultural, agriculture-related and on-farm diversified uses are permitted.

The subject lands are designated "Protected Countryside" and "Unique Agricultural Area" in the Regional Official Plan (ROP) (2014 Consolidation, as amended) and "Agricultural" in the Town Official Plan (2017 Consolidation, as amended).

Section 2.3.4.2 of the PPS directs that "lot adjustments in prime agricultural areas may be permitted for legal or technical reasons." The PPS defines "legal or technical reasons" as "severances for purposes such as easements, corrections of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot."

Section 4.6(1)(e) of the Greenbelt Plan and Section 5.B.8.1 of the ROP permit

"minor lot adjustments or boundary additions, provided they do not create a separate lot for a residential dwelling in prime agricultural areas, including specialty crop areas, and there is no increased fragmentation of a key natural heritage feature or key hydrologic feature." The ROP also includes specific criteria for lot creation that states that the size of any new lot shall not exceed an area of 0.4 hectares (1 acre) except to the extent of any additional area deemed necessary to support a well and private sewage disposal system. This policy is intended to limit non-agricultural lot sizes to the minimum size necessary for the use and maintain as much land as possible within the prime agricultural area for long-term agricultural use.

Section 7.4(4)(b) of the Town Official Plan directs that:

Consents are permitted for minor boundary adjustments or easements provided that:

- (i) the boundary adjustment is minor, or*
- (ii) the land for which the consent is requested is to be added to adjoining lands where there is an existing farm operation;*
- (iii) the parcel to be retained is large enough to support a potentially viable farm operation;*
- (iv) the consent must comply with other policies of the Plan, and*
- (v) the consent must not create a separate lot for a residential dwelling.*

The Planning Justification Report submitted with the Application states that the Application "does not cause further fragmentation to the agricultural land base. As the pond, the hobby shop and the geothermal system are all existing uses, there is no removal of active agricultural lands." However, historical aerial imagery shows that there were crops in the location of the geothermal system and hobby shop until they were removed around 2006 when the hobby shop and geothermal system were constructed. Also, the application is proposing to remove 2.37 acres of land from the agricultural lot which could still potentially be used for agricultural, agriculture-related or on-farm diversified uses in the future.

The Planning Justification Report also states that the Application "is technical on the grounds that the geo-thermal system is currently serving lands on a separate lot as well as the hobby barn and can be consolidated." The Agricultural Impact Letter submitted with the Application states that "the geothermal system lines... provide heat and air conditioning for the dwelling and hobby shop on the adjacent lands, and the hobby shop on the adjacent lands provides no real agricultural purpose for the vineyard on the subject lands." The Agricultural Impact Letter also states that "there are clearly things on the subject lands (farm) that would make more sense if they were included on the adjacent lands (dwelling)." Staff generally support the use of renewable energy sources and the reduction of greenhouse gas production. However, if the geothermal system, hobby farm and tennis court serve as accessory uses to the adjacent residential lot, as indicated in the application materials, these uses should not have been constructed on the adjacent agricultural lot.

The owner removed crops and constructed accessory residential uses on the subject lands and is now citing the location of these existing accessory residential uses as a justification to expand the residential lot and remove agricultural lands as part of a third boundary adjustment on the subject lands. The past and proposed consents have been incrementally adding to the size of the residential lot, cumulatively resulting in the removal of 2.73 acres of agricultural land in addition to the original 1-acre farm retirement lot. The existing residential lot is 1.37 acres, which is larger than the policy requirement of 1-acre for new residential lots. The proposed boundary adjustment would add an additional 2.73 acres to the residential lot, almost tripling its size.

The Application does not result in the creation of a new residential lot and does not increased fragmentation of a key natural heritage feature or key hydrologic feature. The retained agricultural lot is large enough to support a viable farm operation. But fundamentally, Staff do not consider the proposed boundary adjustment to be minor, and satisfactory reasons for the expansion of the residential lot have not been provided. The Regional comments are generally consistent with the position of Town Staff.

The subject lands are zoned "Rural (A)" under Zoning By-law 500A-74 (2018 Consolidation as amended). The retained lot (Part 1) and the proposed merged lot (Parts 2 and 3) meet all the zoning requirements.

4.1 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.

Corporate Services – No objection.

Fire - No objection.

Heritage – No objection. The subject lands are within the area of archaeological potential. However, as no construction or excavation is proposed, an archaeological assessment will not be required for this proposal.

Operations – No objection. Conditions requested regarding interconnection of services and road widening.

Urban Design – No objection.

Agencies

Enbridge – No objection.

Hydro One – No objection.

Niagara Peninsula Conservation Authority – No objection.

Niagara Region – The proposed boundary adjustment is consistent with Provincial and Regional policies with respect to permissions for lot adjustments/minor boundary adjustments because the proposed consent does not create a separate lot for a residential dwelling, and does not result in increased fragmentation of a key natural heritage feature or hydrologic feature. It is the opinion of Regional staff that the cumulative impact of the historical consents is not in keeping with the intent of the policy as the non-agricultural use has incrementally encroached onto the agricultural land, thus removing prime agricultural lands that could have been used for agricultural production. Sufficient justification has not been provided as to how the intent of the lot size policy is maintained nor has there been discussion on the cumulative impact of the historical boundary adjustments on the agricultural parcel. Region Staff are unclear why the geothermal system was not located on the residential lot instead of on the adjacent agricultural parcel.

Public

No public comments were received at the time of preparing of this report.

5. STRATEGIC PLAN

Not applicable.

6. OPTIONS

Not applicable.

7. FINANCIAL IMPLICATIONS

Not applicable.

8. 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 are final.

9. CONCLUSION

Community & Development Services staff recommend refusal of Consent Application B-06/21 as the application does not meet the *Planning Act* requirements, is not consistent with the Provincial Policy Statement, and does not conform with the Greenbelt Plan, Niagara Regional Official Plan and the Town Official Plan.

Respectfully submitted,



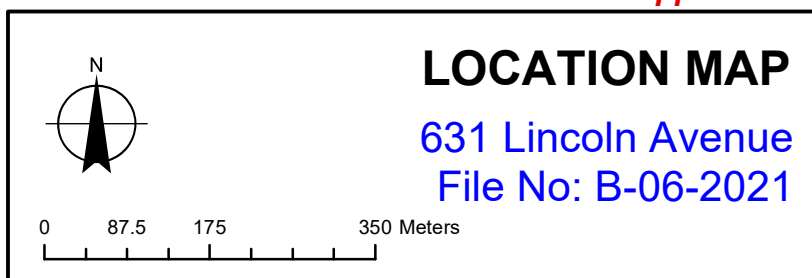
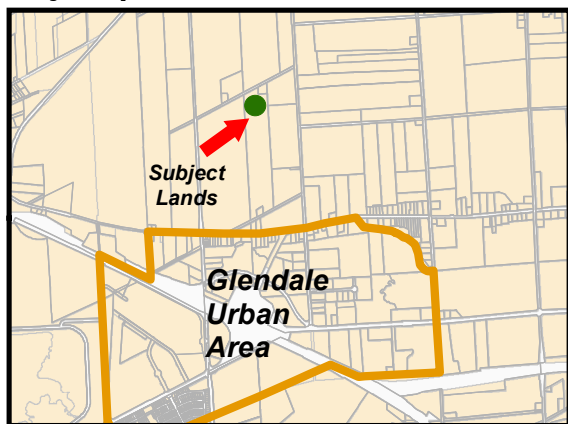
Mark Iamarino, MCIP, RPP
Senior Planner

ATTACHMENTS

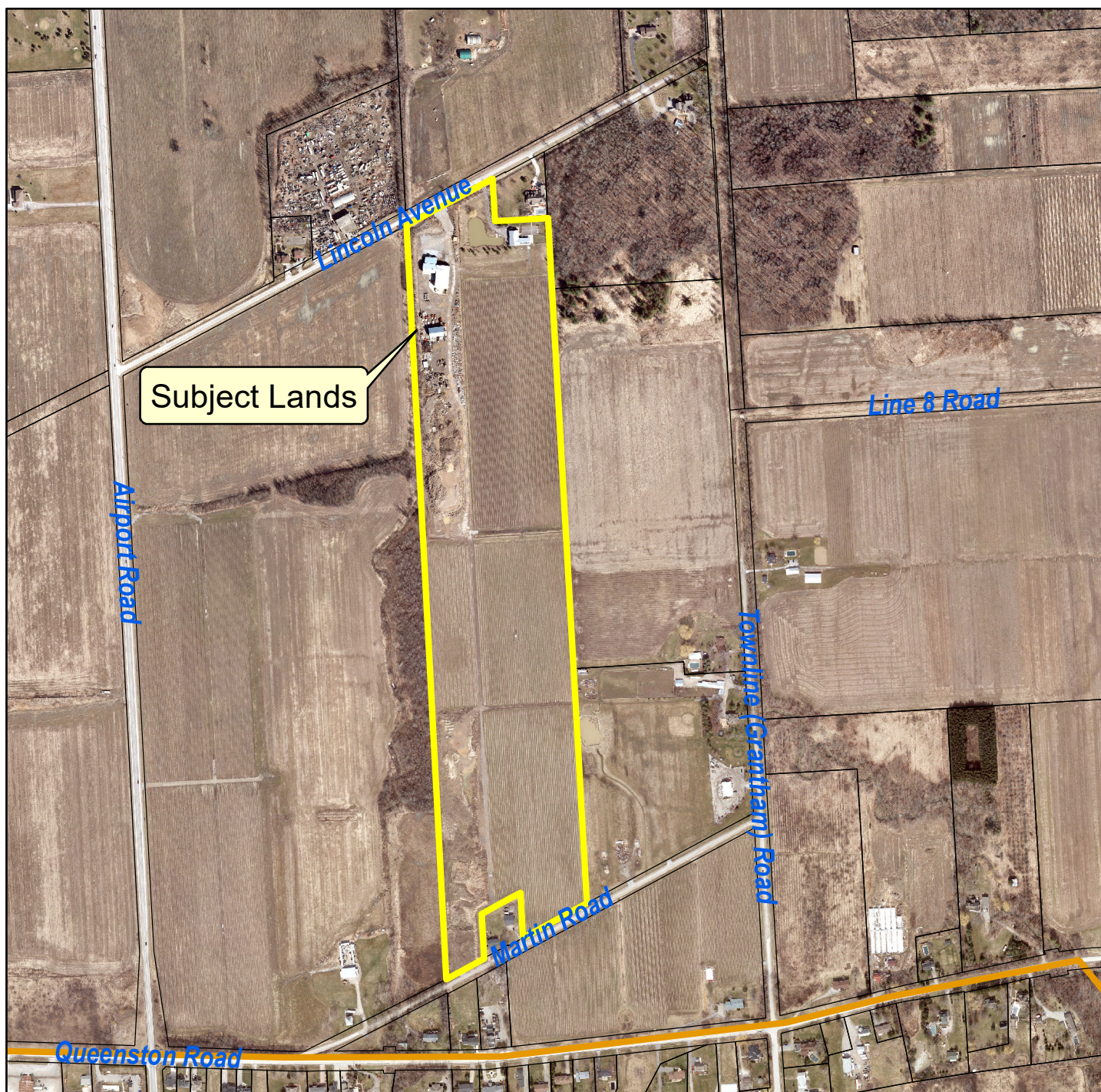


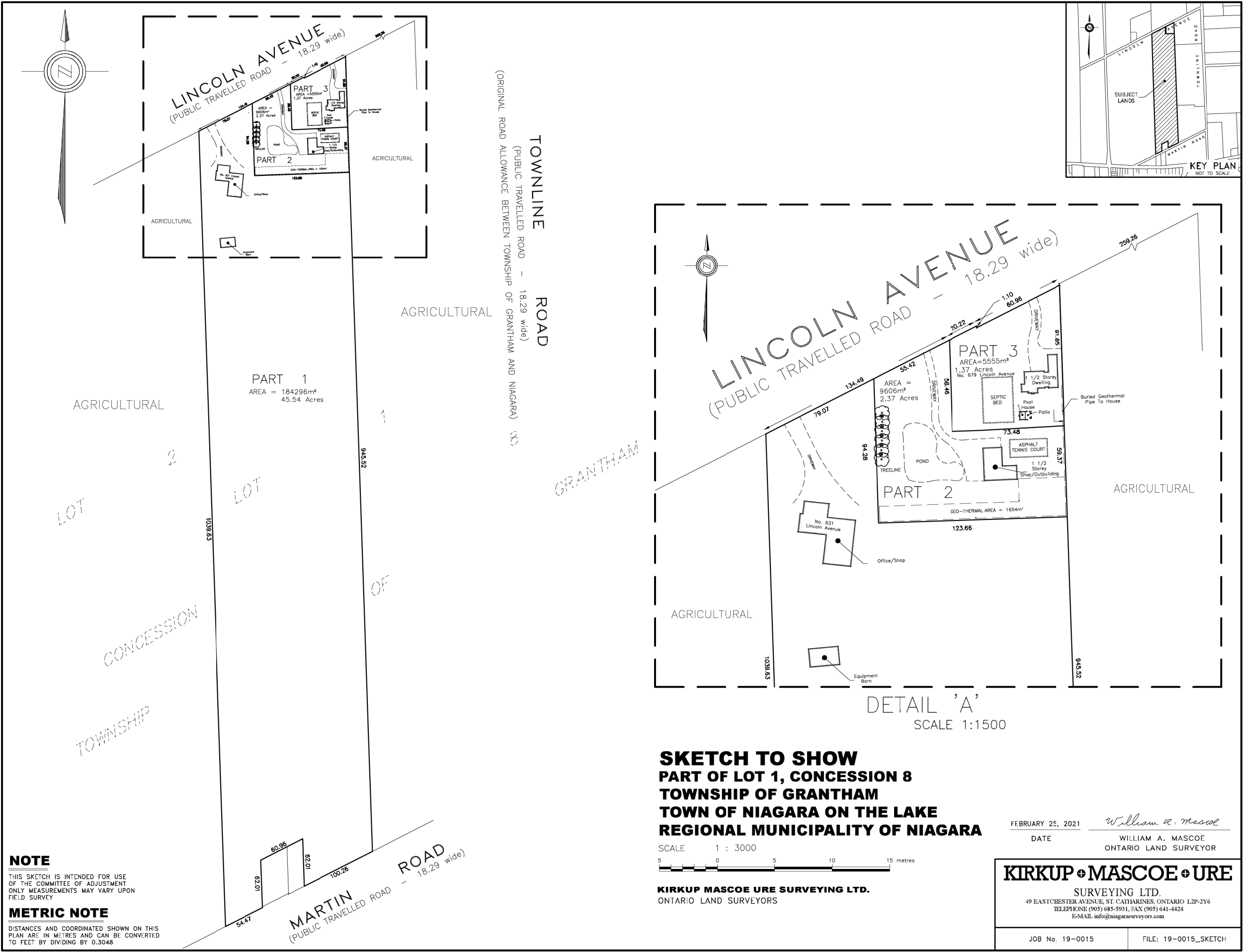
Appendix I_Application Drawing.pdf Appendix II_Location Map.pdf

First Capital of Upper Canada - 1792



1:8,000





Planning and Development Services

1815 Sir Isaac Brock Way, Thorold, ON L2V 4T7
905-980-6000 Toll-free: 1-800-263-7215

Via Email Only

April 30, 2021

File No.: D.06.05.CS-21-0023

Ms. Natalie Thomson
Secretary/Treasurer Committee of Adjustment
Town of Niagara-on-the-Lake
1593 Four Mile Creek Road, PO Box 100
Virgil, ON L0S 1T0

Dear Ms. Thomson:

**Re: Regional and Provincial Comments
Consent Application
Proposed Boundary Adjustment
Town File No.: B-06/21
Address: 631 Lincoln Avenue
Town of Niagara-on-the-Lake**

Regional Planning and Development Services staff has reviewed the information submitted for the above noted consent application, including the Planning Justification Report (prepared by NPG, dated March 2021) and the Agriculture Impact Letter (prepared by OTB Farm Solutions, March 19, 2021). According to the Notice of Application, the application proposes a boundary adjustment by conveying a 2.37 acre (9,606 m²) parcel of land (Part 2) to be merged with the abutting 1.37 acre (5,555 m²) parcel (Part 3), 681 Lincoln Avenue, for residential use. The retained 45.54 acre (184,296 m²) parcel (Part 1) would continue to be used for agricultural purposes. Regional staff note that the residential parcel is identified on our mapping as 679 Lincoln Avenue.

A Preconsultation meeting for this proposal was held on July 18, 2019. The application was received by Regional staff on April 12, 2021 and the associated review fees were received April 15, 2021. Regional staff offers the following Provincial and Regional comments to assist the Committee in considering the application.

Provincial and Regional Policies

The 2020 Provincial Policy Statement (PPS) designates the subject lands as within a Prime Agricultural Area and more specifically, a Specialty Crop Area. The PPS provides

that Prime Agricultural Area lands will be protected for long-term agricultural use with Specialty Crop Areas being given the highest priority for protection. The subject lands are designated Specialty Crop Area – Niagara Peninsula Tender Fruit and Grape Area within the 2017 Greenbelt Plan's (GB) Protected Countryside, which allows for a full range of agricultural and agriculture-related uses. The Growth Plan (GP) identifies the lands as within the prime agricultural area of the Agricultural System.

As outlined in the Regional Official Plan (ROP), the subject lands are located outside the Urban Area Boundary for the Town of Niagara-on-the-Lake and are designated as Unique Agricultural Area on the Region's Agricultural Land Base Map. In conformity with Provincial policies, the highest priority is given to preserving Unique Agricultural Area land with agriculture being the predominant use. All existing uses lawfully permitted prior to the effective date of the GB coming into force (December 16, 2004) are permitted by the Regional policies.

Provincial and Regional policies recognize that agricultural land is a valuable asset that must be properly managed and protected. Accordingly, the policies of the PPS, GB, and ROP restrict severances in agricultural areas unless they adhere to specific criteria. Lot adjustments may be permitted in prime agricultural areas for legal or technical reasons, which is defined in the PPS as "severances for purposes such as easements, corrections of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot." The GB and ROP allow for minor boundary adjustments or easements provided they do not create a separate lot for a residential dwelling, and do not result in increased fragmentation of a key natural heritage feature or hydrologic feature.

The policies of the PPS, GB, GP and ROP promote energy conservation and opportunities for green alternative energy systems, such as district energy, wind, solar and geothermal technology.

Background

The original farm retirement lot, known municipally as 679 Lincoln Avenue, was created as a 4018 m² (0.993 acre) parcel through a consent application in 1994 (B169-94). A minor boundary adjustment in 2008 (B-17/08) added 336.4 m² (.08 acre) to 679 Lincoln Avenue to accommodate the location of an existing accessory building that was constructed over the existing rear property line. An additional minor boundary adjustment in 2010 (B-5/10) added 1148.6 m² (.28 acre) to 679 Lincoln Avenue to accommodate an upgraded septic system necessary for the dwelling. These previous consents increased the residential parcel to 5555 m² (1.37 acre). The current application proposes to add 9,606 m² (2.37 acres) to the residential property. Part 2 is an L-shaped parcel that wraps around the residential parcel (Part 3) and is comprised of a hobby shop, pond, geothermal system and existing landscaping.

Parts 1 and 2 are owned by Mr. Waldy Wall and Part 3 is owned by Mrs. Ruth Wall.

Analysis

Regional staff note that these lands are identified as Unique Agricultural Area, which is given the highest priority for preservation. Provincial and Regional policies provide for minor boundary adjustments provided a new residential lot is not created and there is no increased fragmentation of natural heritage features. The proposed boundary adjustment is consistent with Provincial and Regional policies with respect to permissions for lot adjustments/minor boundary adjustments because the proposed consent does not create a separate lot for a residential dwelling, and does not result in increased fragmentation of a key natural heritage feature or hydrologic feature. The Planning Justification Report (PJR) states the boundary adjustment can reasonably be considered technical on the grounds that the geo-thermal system is currently serving lands on a separate lot as well as the hobby barn and can be consolidated.

The ROP also includes specific criteria for lot creation that states that the size of any new lot shall not exceed an area of 0.4 hectares (1 acre) except to the extent of any additional area deemed necessary to support a well and private sewage disposal system as determined by the Ministry of the Environment, Ministry of Municipal Affairs and Housing, or persons appointed on behalf. This policy is intended to limit non-agricultural lot sizes to the minimum size necessary for the use and maintain as much land as possible within the prime agricultural area for long term agricultural production. It is the opinion of Regional staff that the cumulative impact of the historical consents is not in keeping with intent of the policy as the non-agricultural use has incrementally encroached onto the agricultural land, thus removing prime agricultural land that could have been used for agricultural production.

The PJR notes that the proposed consent does not affect the specialty crop land as the Part 2 land is not currently used for agriculture. The Agricultural Impact letter notes that Part 2 is comprised of a pond, hobby shop, and geothermal system and Part 1 is comprised of an office building, equipment barn and vineyard. The letter states that grapes cannot be planted on the berm associated with the geothermal system and the pond is not big enough to effectively be used to irrigate the agricultural lands (Part 1). The letter surmises that there is no agricultural land being removed as a result of this application based on the current use of the land (Part 2) nor will there be a negative impact on the retained farm land or surrounding farms. Regional staff agrees that the lands are not currently farmed and the impact on the retained farm land and surrounding farms is minimal; however, sufficient justification has not been provided as to how the intent of the lot size policies is maintained nor has there been discussion on the cumulative impact of the historical boundary adjustments on the agricultural parcel. The PJR simply states that the proposed 1.52 ha (3.74 acre) is comparable to other lands in the vicinity used for residential purposes.

The land associated with Part 2 appears to function as part of the residential parcel, with the hobby shop, pond and geothermal system supporting the existing residential dwelling. Provincial and Regional policies support the conservation of energy and promote the use of green energy systems such as the geothermal system in conserving energy. Regional staff support the use of the geothermal system as an

alternative energy supply for the residential use, although it is unclear why the geothermal system was not located on the residential lot instead of on the adjacent agricultural parcel.

Core Natural Heritage

The subject property is adjacent to portions of the Region's Core Natural Heritage System (CNHS). Specifically, the CNHS adjacent to this property consists of Locally Significant Lincoln Airport Wetland (LSW) Complex and Significant Woodland.

The subject lands are also partially located within the Greenbelt Natural Heritage System, which elevates the Significant Woodland and Wetland to an Environmental Protection Area (EPA) designation and the Greenbelt Plan (2017) identifies Wetlands and Significant Woodlands as key hydrologic features (KHF).

Environmental staff are satisfied that there is no increased fragmentation of these features as a result of the proposed boundary adjustment as the features continue to be under the same ownership.

Servicing

Private Sewage System staff have reviewed the consent application for the proposed boundary adjustment proposing to add Part 2 to Part 1 (679 Lincoln Ave.). A septic permit was issued by our department in 2014 for the existing system currently servicing the dwelling at 679 Lincoln Avenue. According to our files and information from the property owner, there is no septic system servicing the landscape business located on the retained parcel (631 Lincoln Avenue).

Conclusion

Given the cumulative effect of the previous consent applications which have resulted in expansion of a non-farm residential use in an area where the intention is for agricultural uses to dominate, the Committee should be satisfied the proposed boundary adjustment meets the overall intent of the of Provincial, Regional and Town policies. Should the Committee find that the intent of the policies are met, the Committee must also ensure that Part 2 merges in title with Part 3 so a new lot is not created.

Should you have any questions or would like to discuss these comments, please contact me at extension 3518. Please send a copy of the Committee's decision on this application.

Respectfully,



Lola Emberson, MCIP, RPP
Senior Development Planner

Appendix I

D.06.05.CS-21-0023

April 30, 2021

cc: Mr. Pat Busnello, Manager of Development Planning (Region)
Ms. Tanya Killins, Private Sewage System Inspector (Region)
Mr. Mark Iamarino, Senior Planner (NOTL)

Planning and Development Services

1815 Sir Isaac Brock Way, Thorold, ON L2V 4T7
905-980-6000 Toll-free: 1-800-263-7215

Via Email Only

August 20, 2021

File No.: CS-21-0023

Natalie Thomson
Secretary Treasurer, Committee of Adjustment
Town of Niagara-on-the-Lake
1593 Four Mile Creek Road
Po Box 100
Virgil, ON L0S 1T0

Dear Ms. Thomson:

**Re: Regional and Provincial Comments
Consent Application B-06/21
Agent: NPG Planning Solutions, Mary Lou Tanner
631 Lincoln Road
Town of Niagara-on-the-Lake**

Regional Development Services staff has reviewed the Planning Justification Report Addendum prepared by NPG Planning Solutions Inc., dated August 2021 submitted in support of the above noted application. Regional Planning and Development Services staff previously provided comments on the consent application on April 30, 2021. The decision of the Committee of Adjustment was deferred at the request of Town staff.

A Planning Justification Report Addendum was prepared by NPG Planning Solutions, dated August 2021, that included additional information to address Regional lot size policies, geothermal systems and the cumulative impact of the historical boundary adjustments. Based on the previous and additional information provided, Regional staff are satisfied that general intent of Regional and Provincial policies are satisfied for the boundary adjustment, as proposed

Should you have any questions concerning the above noted comments, please do not hesitate to contact me at 905-980-6000 extension 3518 or by email at lola.emberson@niagararegion.ca.

Respectfully,

Appendix I

CS-21-0023

August 20, 2021



Lola Emberson, MCIP, RPP
Senior Development Planner

cc: Mr. R. Alguire, Development Technician, Niagara Region
Ms. T. Killins, Private Sewage Sytem Inspector, Niagara Region



In the matter of the Planning Act, R.S.O. 1990, c. P.13, s. 53:

DECISION: File No. Consent B-06/21 – 631 Lincoln Avenue
Assessment Roll No. 2627020018018000000

Description of the Land and Purpose and Effect of the Application:

The subject lands are known municipally as 631 Lincoln Avenue, lying on the south side of Lincoln Avenue, east of Airport Road, Niagara-on-the-Lake.

Consent Application B-06/21 proposes a boundary adjustment by conveying a 2.37 acre (9,606 square metre) parcel of land to be merged with the abutting parcel, 681 Lincoln Avenue, for residential use. The retained parcel would continue to be used for agricultural purposes.

Decision: Granted, subject to the conditions attached as Schedule A.

Reasons: The Committee of Adjustment considered all the written and oral submissions and agrees with the consent report analysis and recommendation that this application does not meet Planning Act requirements, is not consistent with the Provincial Policy, the Greenbelt Plan, Niagara Regional Official Plan and the Town Official Plan regarding boundary adjustments.

Date of Notice: September 17, 2021

Last date to file a notice of appeal: October 07, 2021

Notice of appeal must be filed with the Secretary-Treasurer for Town of Niagara-on-the Lake Committee of Adjustment, must set out the reasons for the appeal and must be accompanied by the fee required by the Ontario Land Tribunal. <https://olt.gov.on.ca/appeals-process/fee-chart/>

You will be entitled to receive notice of any changes to the conditions of provisional consent if you have made a written request to be notified of changes to the conditions.

Only individuals, corporations and public bodies may appeal decisions in respect of applications for consent to the Ontario Land Tribunal. A notice of appeal may not be filed by an unincorporated association or group. However, a notice of appeal may be filed in the name of an individual who is a member of the association on its behalf.

Information regarding the Ontario Land Tribunal can be found at;
<https://www.ontario.ca/document/citizens-guide-land-use-planning/ontario-land-tribunal>

Appendix II

Consent was obtained by the Secretary Treasurer on September 16, 2021 to insert electronic signatures below;



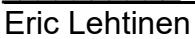
Steve Bartolini
Committee of Adjustment



John Bice (Vice Chair)
Committee of Adjustment



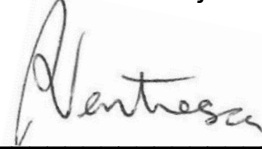
Paul Harber
Committee of Adjustment



Eric Lehtinen
Committee of Adjustment



Allen Snider (Chair)
Committee of Adjustment



Richard Ventresca
Committee of Adjustment

I, Natalie Thomson, Secretary Treasurer of the Committee of Adjustment for the Town of Niagara-on-the-Lake, hereby certify that the above is a true copy of the decision of the Committee of Adjustment with respect to the application recorded herein.

DATED at the Town of Niagara-on-the Lake, this 17th day of September, 2021



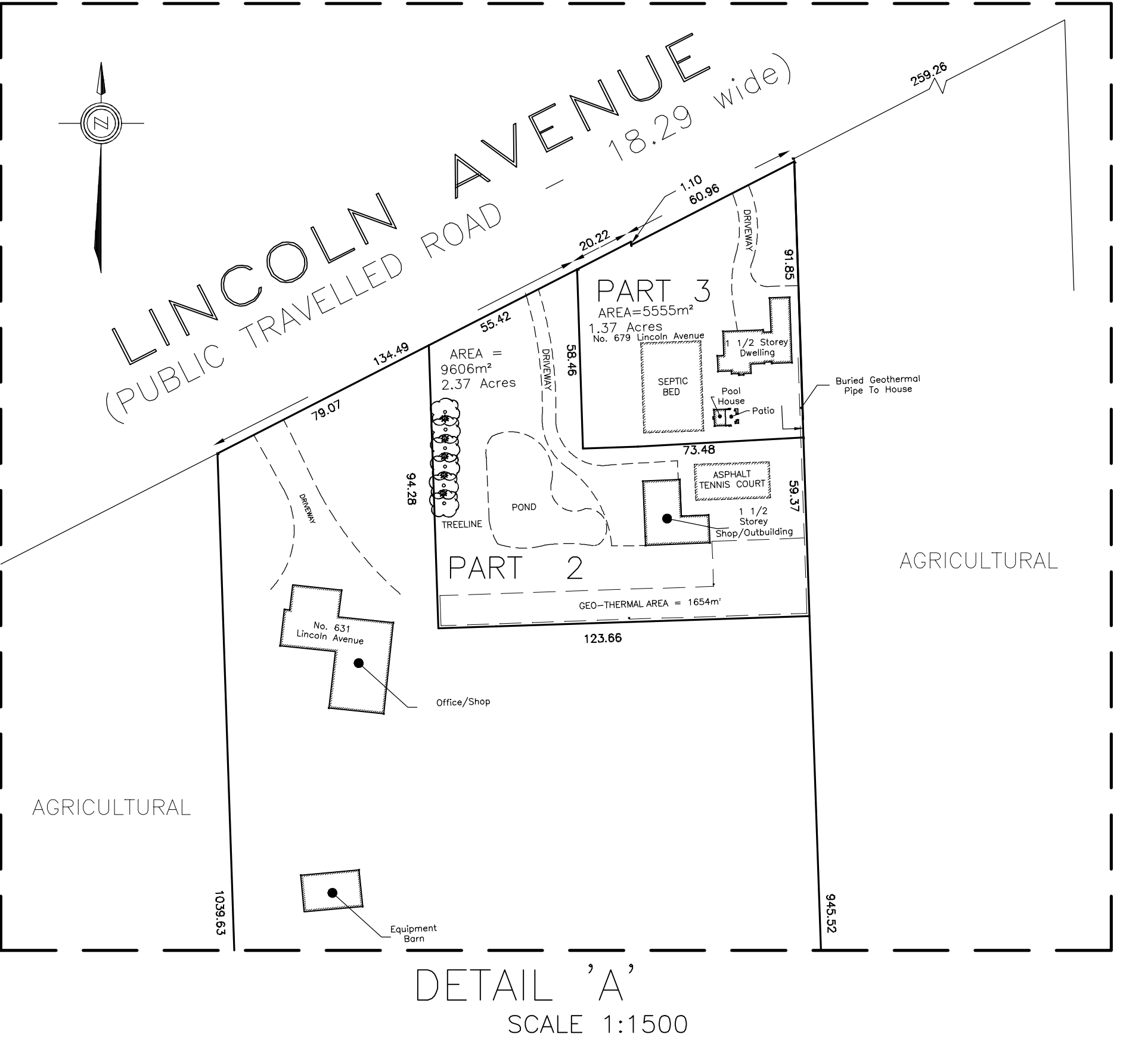
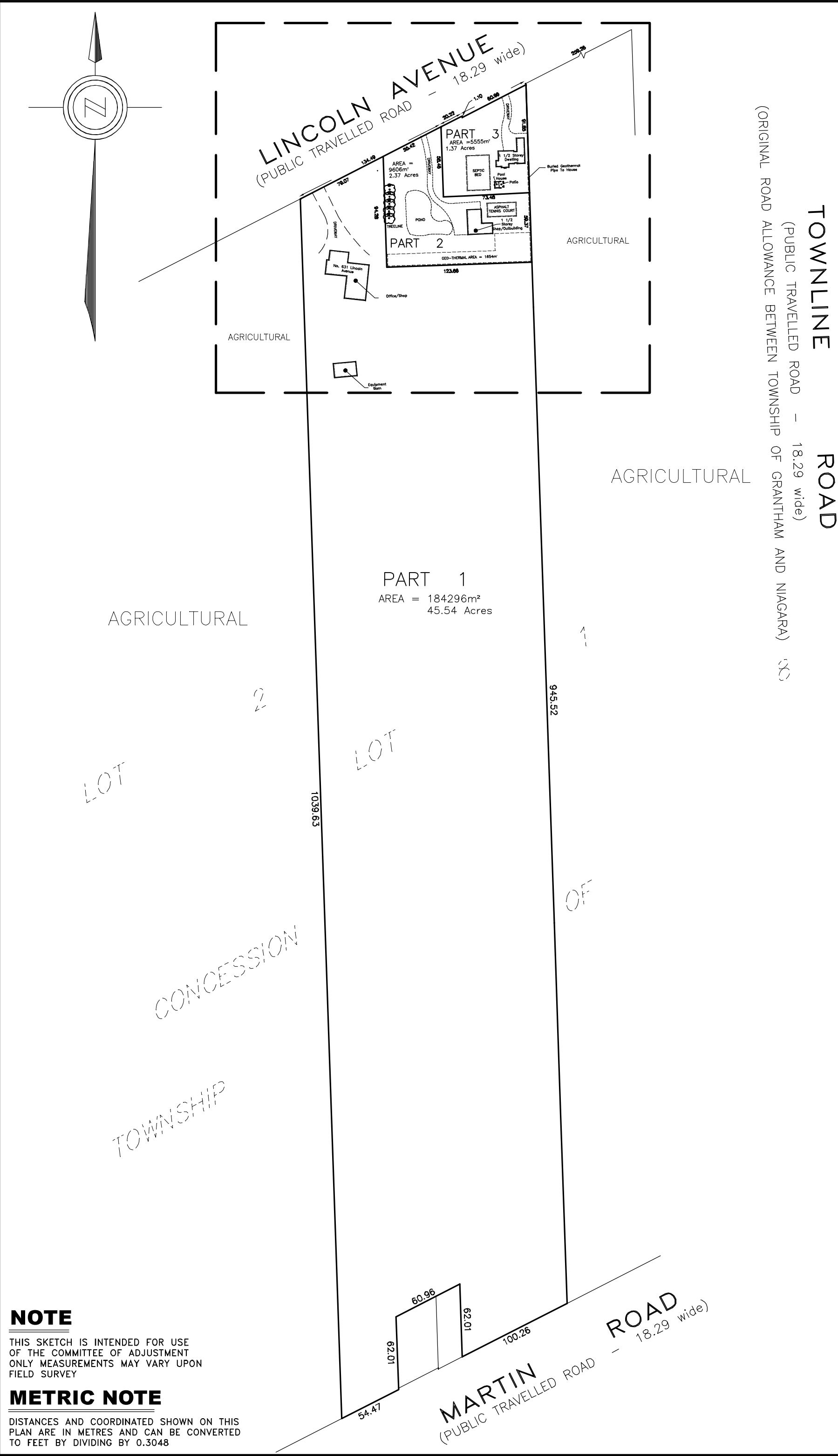
Natalie Thomson, Secretary Treasurer

Appendix II

Schedule A

Conditions of Provisional Consent:

- 1.1.1 That the owner/applicant provides a legal description of Part 2, acceptable to the Registrar, together with 1 digital copy to-scale of the deposited reference plan, if applicable, or a copy of all instruments and plans referred to in the legal description, to the satisfaction of the Town, for use in the issuance of the Certificate of Consent.
- 1.1.2 That pursuant to Section 50 (12) of the Planning Act, it is hereby stipulated that Section 50 (3) or 50 (5) shall apply to any subsequent conveyance of, or other transaction involving the identical subject parcel of land (Part 2); that Part 2 is merged in title with Part 3 and they become one parcel of land; and that the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Town, that Part 2 shall be conveyed to the owner of the adjacent property (Part 3) and to prepare and register application to consolidate the lands and forward a copy of receipted application within two years of issuance of the consent certificate.
- 1.1.3 That the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Town, to forward a copy of documentation confirming the transaction, i.e. transfer of Part 2, has been carried out, the documentation to be provided within two years of issuance of the consent certificate, or prior to the issuance of a building permit, whichever occurs first.



**SKETCH TO SHOW
PART OF LOT 1, CONCESSION 8
TOWNSHIP OF GRANTHAM
TOWN OF NIAGARA ON THE LAKE
REGIONAL MUNICIPALITY OF NIAGARA**

SCALE 1 : 3000
KIRKUP MASCOE URE SURVEYING LTD.
ONTARIO LAND SURVEYORS

FEBRUARY 25, 2021
DATE
WILLIAM A. MASCOE
ONTARIO LAND SURVEYOR

KIRKUP • MASCOE • URE
SURVEYING LTD.
49 EASTCHESTER AVENUE, ST. CATHARINES, ONTARIO L2P-2Y6
TELEPHONE (905) 685-5931, FAX (905) 641-4424
E-MAIL info@niagarasurveyors.com

JOB No. 19-0015
FILE: 19-0015_SKETCH



COMMITTEE OF ADJUSTMENT MEETING MINUTES

Thursday September 16, 2021

06:30 PM

PRESENT:

Chair: Allen Snider; Vice Chair: John Bice; Members: Eric Lehtinen, Richard Ventresca, Paul Harber, Steve Bartolini

REGRETS:

STAFF:

Natalie Thomson Secretary-Treasurer
Richard Wilson Manager of Planning

OTHERS:

Councillor Garry Burroughs

1. Attendance

Chair Allen Snider called the roll.

2. Call to Order, Declaration of Quorum and Introduction of Committee and Staff

Chair Allen Snider called the meeting to order and confirmed quorum at 6:30 p.m.

3. Disclosure of Pecuniary Interest and General Nature Thereof

There were none.

4. Request for Withdrawal or Adjournment

There were none.

Moved by Paul Harber that councillor Burroughs be allowed to join the Hearing as permitted by the procedural by law.

APPROVED.

Appendix III

The following Committee members noted approval;

Allen Snider
Paul Harber
John Bice
Steve Bartolini
Eric Lehtinen
Richard Ventresca

5. Presentations

There were none.

6. Announcements

There were none.

7. Applications

7.1 COA-55-2021 - 15 Field Road - Legal Non-Conforming Use LNCU-02/21

Erica Lepp (homeowner) was present on behalf of the application. Erica delivered a presentation.

N. Thomson summarized the notice.

R. Wilson summarized the staff report and noted the letters of correspondence submitted.

The Chair called on those registered to speak in support of the proposal. There was no one in the audience who wished to speak for the application.

The Chair called on those registered to speak against the application. There was no one in the audience who wished to speak against the application.

The Committee discussed the application.

Moved by Richard Ventresca that COA-55-2021 - 15 Field Road - Legal Non-Conforming Use LNCU-02/21 be approved subject to the conditions in the staff report;

- 1.1.1 That approval applies to a "cottage rental" (short term rental) use that shall satisfy all provisions of Zoning By-law 4316-09 (as amended).

APPROVED.

Appendix III

The following Committee members noted approval;

Allen Snider
Paul Harber
Steve Bartolini
Richard Ventresca

Decision: Granted, subject to the noted condition.

Reasons: The Committee of Adjustment considered the oral and written submissions and agrees with the legal non-conforming use report analysis and recommendation that this application meets the Planning Act tests for legal non-conforming use:

1. The use requested is similar to the purpose for which it was used on the day the By-law was passed.
2. The lands were lawfully used for a purpose prohibited by the By-law on the day the By-law was passed, and has been continually used until the date of the application.

The Chair summarized the decision.

7.2 COA-56-2021 - 15 Vincent Avenue - Minor Variance A-32/21

Mary Marrello (homeowner) was present on behalf of the application. Mary delivered a presentation.

N. Thomson summarized the notice.

R. Wilson summarized the staff report and noted the letter of correspondence.

The Chair called on those registered to speak in support of the proposal. There was no one in the audience who wished to speak for the application.

The Chair called on those registered to speak against the application. There was no one in the audience who wished to speak against the application.

The Committee discussed the application.

Moved by Steve Bartolini that COA-56-2021 - 15 Vincent Avenue - Minor Variance - A-32/21 be approved.

APPROVED.

The following Committee members noted approval;

Allen Snider
Paul Harber

Appendix III

John Bice
Steve Bartolini
Eric Lehtinen
Richard Ventresca

Decision: Granted.

Reasons: The Committee of Adjustment agrees with the minor variance report analysis and recommendation that this application meets the four Planning Act tests for minor variance:

1. The variance is minor in nature.
2. The variance is appropriate for the development of the land.
3. The general intent and purpose of the Zoning By-law is maintained.
4. The general intent and purpose of the Official Plan is maintained.

The Chair summarized the decision.

7.3 COA-57-2021 - 14 Wilberforce Avenue - Minor Variance A-33/21

Dave Funk (agent DF Design Build) was present on behalf of the application. Dave delivered a presentation.

N. Thomson summarized the notice.

R. Wilson summarized the staff report noted the letters of correspondence.

The Chair called on those registered to speak in support of the proposal. There was no one in the audience who wished to speak for the application.

The Chair called on those registered to speak against the application. There was no one in the audience who wished to speak against the application.

The Committee discussed the application.

Moved by Eric Lehtinen that COA-57-2021 - 14 Wilberforce Avenue - Minor Variance - A-33/21 be approved.

APPROVED.

The following Committee members noted approval;

Allen Snider
Paul Harber
John Bice
Steve Bartolini
Eric Lehtinen

Appendix III

Richard Ventresca

Decision: Granted.

Reasons: The Committee of Adjustment agrees with the minor variance report analysis and recommendation that this application meets the four Planning Act tests for minor variance:

1. The variance is minor in nature.
2. The variance is appropriate for the development of the land.
3. The general intent and purpose of the Zoning By-law is maintained.
4. The general intent and purpose of the Official Plan is maintained.

The Chair summarized the decision.

7.4 COA-58-2021 - 631 Lincoln Avenue - Consent B-06/21

Mary Lou Tanner (NPG Solutions) was present on behalf of the application. Mary Lou delivered a presentation.

N. Thomson summarized the notice.

R. Wilson summarized the staff report.

The Chair called on those registered to speak in support of the proposal. There was no one in the audience who wished to speak for the application.

The Chair called on those registered to speak against the application. There was no one in the audience who wished to speak against the application.

The Committee discussed the application.

Motion to approve COA-58-2021 - 631 Lincoln Avenue - Consent B-06/21 based on the three standard administrative conditions moved by John Bice.

APPROVED.

The following Committee members noted approval;

Allen Snider

Paul Harber

John Bice

Steve Bartolini

Richard Ventresca

Decision: Granted, based on the following conditions:

Appendix III

1.1.1 That the owner/applicant provides a legal description of Part 2, acceptable to the Registrar, together with 1 digital copy to-scale of the deposited reference plan, if applicable, or a copy of all instruments and plans referred to in the legal description, to the satisfaction of the Town, for use in the issuance of the Certificate of Consent.

1.1.2 That pursuant to Section 50 (12) of the Planning Act, it is hereby stipulated that Section 50 (3) or 50 (5) shall apply to any subsequent conveyance of, or other transaction involving the identical subject parcel of land (Part 2); that Part 2 is merged in title with Part 3 and they become one parcel of land; and that the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Town, that Part 2 shall be conveyed to the owner of the adjacent property (Part 3) and to prepare and register application to consolidate the lands and forward a copy of receipted application within two years of issuance of the consent certificate.

1.1.3 That the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Town, to forward a copy of documentation confirming the transaction, i.e. transfer of Part 2, has been carried out, the documentation to be provided within two years of issuance of the consent certificate, or prior to the issuance of a building permit, whichever occurs first.

Reasons: The Committee of Adjustment agrees that this application meets Planning Act requirements, is consistent with Provincial Policy, the Niagara Region Official Plan and the Town Official Plan regarding the creation of a new lots.

The Chair summarized the decision.

7.5 COA-59-2021 - 169 King Street - Consent B-16/21

Stephen Bedford (agent) was present on behalf of the application. Stephen delivered a presentation.

N. Thomson summarized the notice.

R. Wilson summarized the staff report.

The Chair called on those registered to speak in support of the proposal. There was no one in the audience who wished to speak for the application.

The Chair called on those registered to speak against the application. There was no one in the audience who wished to speak against the application.

The Committee discussed the application.

Appendix III

Moved by Paul Harber that COA-59-2021 - 169 King Street - Consent B-16/21 be approved subject to the conditions listed in the staff report;

1.1.1 That the owner/applicant provides a legal description of Part 1, acceptable to the Registrar, together with 1 digital copy to-scale of the deposited reference plan, if applicable, or a copy of all instruments and plans referred to in the legal description, to the satisfaction of the Director of Community and Development Services, for use in the issuance of the Certificate of Consent; and

1.1.2 That the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Director of Community and Development Services, to forward a copy of documentation confirming the transaction, i.e. transfer of Part 1, has been carried out, the documentation to be provided within two years of issuance of the Consent certificate.

APPROVED.

The following Committee members noted approval;

Allen Snider
Paul Harber
John Bice
Steve Bartolini
Eric Lehtinen
Richard Ventresca

Decision: Granted, subject to the noted conditions.

Reasons: The Committee of Adjustment agrees with the consent report analysis subject to the conditions of provisional consent, this application meets Planning Act requirements, is consistent with Provincial Policy, the Niagara Region Official Plan and the Town Official Plan regarding the creation of a new lots.

The Chair summarized the decision.

8. Minutes for Approval

August 2021 Minutes - Approved because of no objections

9. New Business

Allen Snider noted his absence at next meeting.

10. Next Meeting Date

Appendix III

October 21, 2021 6:30pm

11. Adjournment

The hearing was adjourned by unanimous consent.

A. Snider, Chair

N. Thomson, Secretary-Treasurer

ADJOURNMENT: 07:45 PM