



The Corporation of the Town of Pelham

**Forensic Review of Certain Concerns Regarding the East
Fonthill Development Project**

March 2014 to November 2017

Private & Confidential

KPMG Forensic

December 18, 2017

This report contains 100 pages



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1 Introduction

KPMG Forensic Inc. ("KPMG") was retained by The Corporation of the Town of Pelham ("The Town of Pelham", or "the Town") to provide forensic investigation services for the purpose of reviewing certain concerns raised regarding the East Fonthill Development Project (the "EFDP").

Specifically, our assistance had been requested in response to public concern including, but not limited to, the price paid by the Town for certain parcels of land, the use of credits with the Town (the "Municipal Credits") to finance the purchase of land, the subsequent buyback of the Municipal Credits by the Town and whether the Town had complied with Municipal By-laws ("By-laws") and other legislation with regards to these activities.

In view of the above noted concerns, we were requested to undertake a review which included the following:

- Review policies, By-laws or other legislation that may be applicable in respect of the above noted transactions
- Review communications/emails in respect of the above noted transactions
- Review and analyze documentation in respect of the above noted transactions, including minutes, approvals, resolutions, appraisals, purchase and sale agreements, etc.
- Review and analyze information and/or documentation in respect of the above noted transactions, as submitted or questioned by interested members of the general public to a dedicated KPMG email address
- Interview employees of the Town of Pelham and other third parties that may have knowledge of these matters, as required



2 Summary of Findings

Based on the scope of review and subject to the restrictions and assumptions outlined in this report, we provide the following comments:

2.1 East Fonthill Development Project

2.1.1 Price paid for park and roadway dedications

In order to carry out the EFDP as approved in 2014 under a secondary plan of the Town's Official Plan (2012), the Town required certain lands for parkland and roadways. At that time, some of the desired land was owned by Fonthill Gardens Inc. and Fonthill Gardens (2015) Inc. (jointly "FG") and some was owned by Denise Mamas (the "Mamas Land"). In order to acquire the land we understand:

- The Town approached a representative of the Mamas Land to purchase a portion for parkland (1.729 acres) of the 8.87 acre parcel of land, as well as a portion for roadway. The Town was advised the entire parcel was to be sold together
- As a result, the Town approached FG to determine its interest in acquiring the Mamas Land if the Town purchased its desired 1.729 acres from FG (excess dedications).
- Based on an appraisal commissioned by the Town, FG acquired the 8.87 acres of the Mamas Land for approximately \$1.79 million
- Following FG's purchase of the Mamas Land, the Town entered into an agreement to acquire the parkland (Parkland Dedication Agreement) from FG which exceeded the amount of parkland dedication required by FG under municipal legislation
- To determine the Town's purchase price of the parkland, the land was appraised as if it was ready for the issuance of building permits (as required under the Parkland Dedication Agreement). Consequently, the Town paid approximately \$80,000 more for 1.729 acres in September 2015 than FG paid for the full 8.87 acre parcel in May 2015.
- To acquire the roadway, the Town entered into a Roadway Agreement with FG which outlined the Town's purchase price was to be \$300,000 per acre. A portion of the roadway related to the Mamas Land and a portion related to property held by FG since 2005

2.1.2 Use of Municipal Credits to finance excess dedications

In order to finance the excess park and roadway dedications, the Town issued Municipal Credits to FG, which could be applied against future payments to the Town. Under the terms of the Parkland Dedication Agreement and Roadway Agreement, FG could use the Municipal Credits to satisfy payments they would otherwise owe to the Town, or assign or sell the credits to a third party at their discretion. The Town had broad authority to use the Municipal Credits to finance the excess dedications, as long as the agreements were structured in a way that did not contravene the Municipal Act.



2.1.3 Repurchase of outstanding Municipal Credits

On September 20, 2016 the Town paid FG approximately \$3 million to repurchase the balance of outstanding Municipal Credits. We note the following:

- The Treasurer recommended Town Council payout the Municipal Credits for reasons which included unanticipated administrative burden of accounting for Municipal Credits sold to third parties by FG
- On August 22, 2016 the Treasurer recommended that a short-term loan be used to finance the repurchase.
- On September 19, 2016 the Treasurer recommended that the repurchase should be financed internally.

2.1.4 Compliance with municipal legislation

Prior to entering into the Parkland Dedication Agreement and Roadway Agreement with FG, the Town considered the structure in order to comply with Town By-laws and other municipal legislation.

Since the Municipal Credits could be applied against any future payments to the Town, they did not constitute development charge credits, and therefore the agreements were not subject to the Development Charges Act.

In addition, the Town's legal counsel determined that the Municipal Credits did not constitute debt under the Municipal Act, since FG could not compel the Town to repay the balance.

2.2 Questions from the Public

KPMG received the following themes of inquiries (as well as others) directly by email from approximately fifty members of the general public:

- Composition of the Town's debt for 2015 – 2017
- Budgets of the Town for 2015 – 2017
- KPMG's independence from the Town as well as fees
- The Town's planned use for the dedicated parkland
- The balance and historical use of the Town's reserves
- Accounting for the purchased parkland and roadway in the Town's 2016 financial statements
- Whether or not the Town paid a 20% premium above appraised value for the parkland dedications
- Development charges and cash-in-lieu of parkland payable by FG to the Town
- Whether or not members of Town Council benefitted financially from the Town's development activities



We have provided a complete list of the inquiries (160 questions as well as related sub-questions) received by KPMG regarding the Town's activities on Schedule 2. Where not already addressed, we have responded to these questions under Section 8.2 of this report to the extent they were within reason of our scope of review.



3 Scope of Report, Limitations and Restrictions

3.1 Scope of Review

Our comments and calculations are based on our review of the information listed in Appendix A. In addition, we have discussed this matter with, and received correspondence from the following representatives of the Town:

- Barbara Wiens, Director of Planning & Development
- Charlotte Tunikaitis, Deputy Treasurer
- Darren Ottaway, Chief Administrative Officer
- Nancy Bozzato, Clerk
- Teresa Quinlin, Director of Corporate Services and Town Treasurer

We also held discussions with the following individuals:

- Callum Shedden, Daniel & Partners LLP
- Sarah J. Draper, Daniel & Partners LLP
- David Allen, Fonthill Gardens Inc. and Fonthill Gardens (2015) Inc.
- Thomas Richardson, Sullivan Mahoney LLP

3.2 Limitations

Our report and analysis were limited for the following reasons:

- We have held no discussions with former employees or current or former members of Council of the Town, who may have been able to provide further information to confirm or refute the concerns presented in this report as well as provide additional supporting documentation
- We have not requested or reviewed all documents of the Town for the entire period under review, March 2014 to November 2017. We have reviewed specific documents we requested. Therefore there may be further relevant documents of which we are unaware.
- We have been provided with specific minutes relevant to the matter under review. We have not reviewed all minutes of the Town for 2014 to 2017.

Our comments in this report are subject to any modifications or alteration that may be caused by information received from any sources in the future.

3.3 Restrictions

We understand that this report is intended to assist in examining, understanding and resolving this matter. Our report is confidential and is not intended for general use, circulation or publication.



However, we understand that Town Council will provide our report to members of the general public. We consent to such uses of our report, however it is not to be published, circulated, reproduced or used for any purpose without our prior written permission in each specific instance, except as noted above.

We will not assume any responsibility or liability for any costs, damages, losses, liabilities or expenses suffered by the Town or anyone as a result of circulation, publication, reproduction, use of or reliance upon our report contrary to the provisions of this section. We will not assume any responsibility or liability for any costs, damages, losses, liabilities, or expenses incurred by anyone else as a result of circulation, publication, reproduction, use of or reliance upon our report. Comments in our report are not intended, nor should they be interpreted to be, legal advice or opinion.

We have relied upon the completeness, accuracy and fair presentation of all the information obtained (the "Information"). Our calculations and analysis are conditional upon the completeness, accuracy and fair presentation of such Information. KPMG has not audited or otherwise independently verified the accuracy or fair presentation of any of the Information. Should additional information be provided to us after the date of this report, we reserve the right, but will be under no obligation, to review this information and adjust our report and calculations.

4 Background

We understand the following from our review of the information received and discussions with representatives of the Town:

The Town

- The Town is a municipality in the Niagara Region. The Niagara Region is located in Southern Ontario, Canada, between Lake Ontario and Lake Erie

East Fonthill Development Project

- The Town adopted an updated Official Plan on April 2, 2012 (the “Official Plan”). Per the Town’s website, “The Official Plan is a municipality’s blueprint for the future. It contains policies to guide municipal planning decisions and information on the future expansion of the Town’s network of roads, water mains, and sewers. The schedules (maps) show where residential, commercial, industrial, institutional, and recreational development can go and what areas must be protected from development.”
- The Official Plan, as approved by the Ontario Municipal Board (“OMB”) on July 18, 2014, includes a secondary plan for an area known as East Fonthill (the “Secondary Plan”)
- As part of the EFDP, the Town entered into agreements with several companies, including Fonthill Gardens Inc., Fonthill Gardens (2015) Inc. (together “Fonthill Gardens” or “FG”) and River Realty Development (1976) Inc. (“River Realty”)
- The Secondary Plan describes a “Greenlands System”, consisting of linked natural heritage features, public parks, trails and stormwater management facilities
- In order to develop the Greenlands System in accordance with the Secondary Plan, the Town required parkland and roadway dedications from FG in excess of amounts required pursuant to Town By-laws and municipal legislation
- Recent development by the Town included planned construction of the Pelham Community Centre (the “Community Centre”) with a budget of approximately \$36 million

In October 2017, KPMG was engaged to investigate certain public concerns over the transactions of the Town related to the EFDP, as well as other related public concerns regarding the Town.

5 Methodology

The methodology used in the preparation of our analysis is summarized below.

5.1 East Fonthill Development Project

In order to identify the actions of the Town regarding the EFDP, we:

- Held discussions with representatives of the Town and other third parties
- Reviewed copies of agreements between the Town and other parties
- Reviewed copies of By-laws of the Town
- Reviewed copies of emails of representatives of the Town
- Reviewed emails submitted by members of the general public

Our findings are outlined in subsection 8.1.

5.2 Land Transactions

In order to identify the actions of the Town regarding certain land transactions, we:

- Held discussions with representatives of the Town and other third parties
- Reviewed the audited consolidated financial statements (the “Financial Statements”) of the Town for the years ended December 31, 2015 and December 31, 2016
- Reviewed copies of specific agreements between the Town and Fonthill Gardens, and between the Town and River Realty
- Conducted searches to identify any affiliations of Town staff and certain third parties
- Reviewed the executive summary of an appraisal of “151 Port Robinson Road Pelham (Fonthill), Ontario”, as prepared by Ridley & Associates Appraisal Services Limited (“Ridley & Associates”), with an effective date of April 24, 2014
- Reviewed an appraisal of “7.8 Acres of Serviced Land Off of Regional Road 20 Fonthill, Ontario” as prepared by MacKenzie Ray Heron & Edwardh (“MRHE”), with an effective date of November 3, 2015 (the “Appraisal”)
- Reviewed a peer review of the Appraisal, as prepared by Ridley & Associates, dated March 11, 2016
- Reviewed copies of specific minutes and By-laws of the Town
- Reviewed copies of specific land registry documents
- Reviewed financial information and analysis, as prepared by the Town
- Reviewed specific sections of the *Development Charges Act, 1997, S.O. 1997, C.27* (the “Development Charges Act”)

- Reviewed specific sections of the *Municipal Act, 2001, S.O. 2001, C.25* (the “Municipal Act”)
- Reviewed specific sections of the *Planning Act, R.S.O 1990, c. P.13* (the “Planning Act”)
- Reviewed copies of specific emails of representatives of the Town
- Reviewed emails submitted by members of the general public

Our findings are outlined in subsection 8.1.

5.3 Compliance with Town By-laws and Municipal Legislation

In order to determine whether the Town complied with Town By-laws and municipal legislation, with regards to the land transactions, including the use of the Municipal Credits, we:

- Held discussions with representatives of the Town and other third parties
- Reviewed copies of specific agreements between the Town and FG, and between the Town and River Realty
- Reviewed copies of specific minutes and By-laws of the Town
- Reviewed the Financial Statements of the Town for the years ended December 31, 2015, and December 31, 2016
- Reviewed financial information and analysis, as prepared by the Town
- Reviewed specific sections of the Development Charges Act, the Municipal Act and the Planning Act
- Reviewed copies of specific emails of representatives of the Town
- Reviewed emails submitted by members of the general public

Our findings are outlined in subsection 8.1.10.

5.4 Questions Submitted by the General Public

In order to gather information regarding certain items raised by the general public, we:

- Reviewed emails submitted to KPMG by members of the general public regarding certain activities of the Town
- Held discussions with representatives of the Town and other third parties
- Reviewed financial information and analysis, as prepared by the Town
- Reviewed copies of specific emails of representatives of the Town

Our findings are outlined in section 8.2.



6 Policies and Applicable Legislation

We have summarized below certain accounting policies of the Town that relate to aspects of our review.

6.1 Accounting Policies

The following descriptions were outlined under “1. Significant accounting policies”, in the notes to the Financial Statements of the Town, for the year ended December 31, 2016.

Deferred revenue – obligatory reserve funds

“Receipts which are restricted by legislation of senior governments or by agreement with external parties are deferred and reported as restricted revenues. When qualifying expenses are incurred, restricted revenues are brought into revenue at equal amounts. Revenues received in advance of expenses which will be incurred in a later period are deferred.”

Deposits and deferred revenue

“Deposits and deferred revenue represent user fees and charges that have been collected but for which the related services have yet to be performed. These amounts will be recognized as revenue in the fiscal year the services are performed.”

Reserves for future expenses

“Certain amounts, as approved by Town Council, are set aside in reserves and reserve funds for future current and capital expenses.”

Development charges

“Development charges, collected under the authority of Sections 33 to 35 of the Development Charges Act, 1997, are reported as deferred revenue – obligatory reserve funds in the consolidated statement of financial position in accordance with Canadian public sector accounting standards. Amounts applied to qualifying capital projects are recorded as revenue in the fiscal period in which funds are expended on qualifying capital projects. Development charges will also be applied to cover costs for servicing debt including interest on borrowings and contributions to sinking funds to retire debt.”



7 Assumptions

In preparing our analysis, we assumed, in addition to assumptions noted elsewhere in this report, that:

- All relevant email communications of representatives of the Town regarding the EFDP were provided to KPMG for review
- Financial information provided by representatives of the Town was based on the use of complete and accurate information, including information from the Financial Statements, and underlying financial records.

8 KPMG Findings

Our findings are detailed below and a timeline of events are summarized on Schedule 1.

8.1 East Fonthill Development Project

The Official Plan includes the Secondary Plan, which describes a development of East Fonthill lands consisting of: four residential neighbourhoods, a commercial/employment centre and The Greenlands System. Per subsection B1.7.2 a) iii) of the Secondary Plan, "The Greenlands System includes linked natural heritage features, public parks, trails and stormwater management facilities." Throughout the course of the EFDP, the Town entered into agreements with several companies, including the agreements listed below:

- Purchase Option and Cost Sharing Agreement with Fonthill Gardens dated March 31, 2014, and amended June 4, 2015
- Parkland Dedication Agreement with Fonthill Gardens dated September 8, 2015
- Roadway Agreement with Fonthill Gardens dated January 11, 2016
- Subdivision Agreement with River Realty dated August 22, 2016 for the purpose of developing an area within East Fonthill
- Subdivision Agreement with Fonthill Gardens dated September 19, 2016 for the purpose of developing the East Fonthill commercial area

We understand the general public have raised concerns regarding certain transactions with respect to the EFDP.

The Town is a developer of the EFDP pursuant to the East Fonthill Commercial Area Subdivision Agreement dated September 19, 2016. The agreement is between FG jointly with the Town and the Town. As a developer, the Town, together with FG is developing owned land. We understand that the Town entered into this agreement in order to share costs, as well as to develop lands owned by each partner in accordance with the Secondary Plan. Per section "2. Land Affected" of the Subdivision Agreement with FG, "*The Lands to be subdivided by the Plan of Subdivision are those lands described in Schedule "A"...*" We understand that the legal description of land per "Schedule A" describes several parcels of land located within East Fonthill.

8.1.1 Parkland Dedication Agreement

Pursuant to By-law 3650 (2015) enacted on September 8, 2015, the Town entered into a Parkland Dedication Agreement with Fonthill Gardens dated September 8, 2015 (the "Parkland Dedication Agreement"). As part of the Parkland Dedication Agreement, FG agreed to grant certain land to the Town to be used as parkland. The amount of parkland granted exceeded the amount normally required by the Town, pursuant to the Planning Act (the "Excess Parkland Dedication"). As consideration for the Excess Parkland Dedication, the Town agreed to issue Municipal Credits for a dollar amount equal to the dedication. The Municipal Credits could be used by FG in lieu of the payment of fees, costs, and other amounts that may otherwise be payable to the Town for future development projects (collectively, "Municipal Payments").

Certain relevant terms of the Parkland Dedication Agreement have been included below:

- C. *The Purchase Option and Cost Sharing Agreement contemplates the development of certain lands described therein by Fonthill Gardens*
- D. *The development by Fonthill Gardens will trigger a parkland dedication or cash-in-lieu payment pursuant to the Planning Act*
- E. *Fonthill Gardens has agreed to grant parkland to the Town in an amount that will exceed the requirements of the Planning Act*
- F. *The Town has agreed to credit Fonthill Gardens for a dollar amount equal to the Excess Dedications (the “Credits”) which may be used to satisfy the payment of any fees, costs and other amounts that may be payable to the Town as part of any development or construction in the Town, including without limiting the generality of the foregoing, any parkland dedication fees, development charges and application fees (collectively, the “Municipal Payments”), subject to the terms of this Agreement*
- 1. *The Town hereby agrees that Fonthill Gardens will, from time to time, be entitled to satisfy any Municipal Payments using the Credits on a dollar for dollar basis until such time as the total Credits used to satisfy the Municipal Payments are equal to the Excess Dedications.*
- 2. *Fonthill Gardens has the right, from time to time, to assign, all or any portion of, the Credits and its rights under this Agreement to any one or more developer or builder (the “Assignees”) according to its sole, absolute, unfettered discretion. The Assignees will be entitled to use the Credits to satisfy any Municipal Payments in the same manner as Fonthill Gardens under this Agreement. Fonthill Gardens agrees to provide the particulars of the amount of the Credits that have been assigned.*
- 3. *Fonthill Gardens will enter into an agreement to convey to the Town for parkland dedication purposes the lands which are cross-hatched in Schedule “A” attached hereto (the “Municipal Lands”).*
- 4. *In order to meet the Town’s need to acquire the parklands early in the process, for purposes of calculating the “Excess Dedications”, the Town confirms that, notwithstanding the provisions of By-Law #2682 (2005), the Town will determine the value of dedications to the Town contained in the Development Agreement by using an appraisal that values those lands as of the day before the issuance of building permits. Fonthill Gardens will: (i) prepare a draft plan depicting the Municipal Lands for purposes of the appraisal; and (ii) pay for the appraisal and will select an appraiser subject to the approval of the Town, not to be unreasonably withheld.*

Lands to be conveyed to the Town by Fonthill Gardens per section “3.” of the Parkland Dedication Agreement (Schedule A) has been attached as Appendix B.

8.1.2 Roadway Agreement

Pursuant to By-law 3696 (2016), enacted on January 11, 2016, the Town entered into a Roadway Agreement with Fonthill Gardens (the “Roadway Agreement”). As part of the Roadway Agreement, FG agreed to grant certain lands to the Town to be used as roadways. A portion of the roadway lands exceeded the municipal standard width of twenty-two metres per the Official Plan (the “Excess Roadway Dedication”). As consideration for the Excess Roadway Dedication, the Town agreed to issue Municipal Credits for a dollar amount equal to the dedication. The Municipal Credits could be

used by FG in lieu of the payment of fees, costs, and other amounts that may otherwise be payable to the Town for future development projects (collectively, "Municipal Payments").

Certain relevant terms of the Roadway Agreement have been included below:

- *A. Fonthill Gardens Inc. and Fonthill Gardens (2015) Inc. (collectively, "Fonthill Gardens") are the registered owners of the lands depicted on Schedule "A" hereto described as Parts 3 and 4 (the "Fonthill Gardens Roadway Lands")*
- *B. Fonthill Gardens has agreed to convey to the Town the Fonthill Gardens Roadway Lands subject to the terms of this Agreement.*
- *Fonthill Gardens hereby agrees to convey the Fonthill Gardens Roadway Lands to the Town (the "Conveyance") on an "as is, where is" basis, but free and clear of any registered encumbrances, for consideration of two dollars (\$2.00). The Conveyance will be completed on the date which is sixty (60) business days after execution of this Agreement by the Town. Fonthill Gardens and the Town agree to sign and deliver such other documents as are typically required for a conveyance of land to the Town for municipal road purposes.*
- *2. ... The conveyance of that portion of Ceremonial Road by Fonthill Gardens which exceeds the twenty-two (22) metre width standard is referred to herein as the "Excess Dedications".*
- *4. The Town has agreed to credit Fonthill Gardens for a dollar amount equal to the value of the Excess Dedications (the "Credits") which may be used to satisfy the payment of any fees, costs and other amounts that may be payable to the Town as part of any development or construction in the Town, including without limiting the generality of the foregoing, any parkland dedication fees development charges and application fees (collectively, the "Municipal Payments"). The calculations of the value of the Excess Dedication under this Agreement will be based on a formula of Three Hundred Thousand Dollars (\$300,000) per acre of Excess Dedications.*
- *5. Fonthill Gardens has the right, from time to time, to assign, all or any portion of, the Credits and its rights under this Agreement to any one or more developer or builder (the "Assignees"), according to its sole, absolute and unfettered discretion. The Assignees will be entitled to use the Credits to satisfy any Municipal Payments in the same manner as Fonthill Gardens under this Agreement. Fonthill Gardens agrees to provide notice to the Town of any such assignment and to provide the particulars of the amount of the Credits that have been assigned.*

8.1.3 New Parkland Dedication By-Law:

The Town enacted a Parkland Dedication By-law 3621 (2015) (the "2015 By-law") on June 1, 2015. The enactment repealed the previous Parkland Dedication By-law 2682 (2005) (the "2005 By-law"). The 2015 By-law is attached as Appendix C to this report. The 2005 By-law, including an attached policy, is attached as Appendix D to this report.

From our discussion with Daniel & Partners LLP, we understand the enactment of the 2015 By-Law on June 1, 2015, which repealed the 2005 By-Law was not a result of the Parkland Dedication Agreement. Rather, we understand it was enacted to address amendments to the Planning Act. Per Daniel & Partners LLP, the 2015 By-Law had no impact on the Excess Parkland Dedication.



We did note a change from the 2005 By-Law to the 2015 By-Law regarding the process to select an appraiser as follows:

- Per the Town’s policy attached to the 2005 By-Law, *“At such time as the subdivision agreement is prepared, the Planning Services Department will acquire the necessary appraisal from a qualified appraiser.”*
- Per the 2015 By-Law the language regarding the selection of the appraiser reads, *“At such time as the subdivision agreement is prepared, the applicant may have the lots and/or blocks appraised by a qualified appraiser...”*.

It appears as though the change allows for the developer to select the appraiser, whereas the selection of the appraiser was previously the responsibility of the Town. Per our discussion with Daniel & Partners LLP, it is standard practice of the Town to have the developer select the appraiser.

8.1.4 Appraisal of Excess Parkland Dedication

MacKenzie Ray Heron and Edwardh - Appraisal

The appraisal of the Excess Parkland Dedication lands was completed by MRHE (the “MRHE Appraisal”), with an effective date of November 3, 2015, and a report date of December 31, 2015. We understand the MRHE Appraisal was based on an extraordinary assumption as follows:

“This report is based on the Extraordinary Assumption that the Subject has been severed and comprises 148 fully serviced lots as set out in Option B of The Planning Partnership’s document, on the day before the issuance of the Building Permit...”

This extraordinary assumption means that the land was valued as if there were 148 fully serviced lots ready for building when in reality it was undeveloped vacant land. We understand that this extraordinary assumption was used in order to value the land as at the day before the first building permit is issued, pursuant to the applicable sections of the Parkland Dedication Agreement and the 2015 By-law.

We understand the MRHE Appraisal was based on land adjacent to the Excess Parkland Dedication lands as follows:

“The purpose of this appraisal is to estimate the current market value of the “fee simple” estate of the subject, as of November 3, 2015, for negotiation purposes with the Municipality. This report has been prepared for Fonthill Gardens Inc., for assistance with Section 42, Park Land Dedication purposes.

To this end we have been instructed to provide a market value for the adjacent 7.8 acres of land as if zoned and serviced as per the specifications of Option B of the Planning Partnership’s document on the day before the issuance of a Building Permit.”

This means the appraised land was separate from, and was a proxy for, the value of the actual lands that comprise the Excess Parkland Dedication. We understand from our review of the Appraisal this method was used because the adjacent 7.8 acres (the “Subject Land”) was similar in location, with available planning documents (Option B of the Planning Partnership’s Document) to assist in



determining value. We understand the Planning Partnership's Document was utilized by the appraiser to estimate the type and density of development which may have otherwise occurred on the Excess Parkland Dedication, had the land been developed by FG.

The Excess Parkland Dedication lands are depicted in Schedule A of the Parkland Dedication Agreement, attached as Appendix B. Schedule A consists of a municipal land registration document of the area, "Part of Thorold Township Lots 166 & 167" (the "Plan"). The Excess Parkland Dedication is comprised of two part parcels ("Parts") of land within the Plan, Part 1 and Part 2. See Table below for the description of each part, per the Plan:

Table 1			
Description of Part 1 and Part 2 of the Plan			
Part	Lot	P.I.N.	Area (square metres)
1	Part of Thorold Township Lots 166 & 167	Part of 64063-0244(LT)	6,230.5
2	Part of Thorold Township Lot 166	Part of 64063-0248(LT)	6,995.5
Total			13,226.0

Using a conversion factor of 0.000247105 acres per square metre, the total area of the Excess Parkland Dedication is 13,226 square metres * 0.000247105 = 3.268 acres.

The MRHE Appraisal concluded an estimated market value of the 7.8 acres of Subject Land of \$8,900,000, based on a unit rate of \$60,000 per lot, and using 148 lots. The calculation per the report is included in Table 2 below:

Table 2			
Estimated market value of the 7.8 acres of			
Subject Land per the MRHE Appraisal			
# of Lots		\$/Lot	Indicated Value
148	\$	60,000	\$ 8,880,000
Rounded To		\$	8,900,000

The MHRE Appraisal further concludes a unit rate per acre of \$1,141,025.

Using the MRHE unit rate per acre, and the Excess Parkland Dedication area of 3.268 acres, the implied value of the Excess Parkland Dedication is \$3,728,870 at November 3, 2015.

Per "4." of the Parkland Dedication Agreement discussed in section 8.1.1 above, "Fonthill Gardens will: (i) prepare a draft plan depicting the Municipal Lands for purposes of the appraisal; and (ii) pay for the appraisal and will select an appraiser, subject to the approval of the Town, not to be unreasonably withheld." We understand that FG selected MRHE as the appraiser, and paid for the appraisal. The Town approved the use of MRHE as the appraiser by email on September 25, 2015. From our discussion with Daniel & Partners LLP, we understand that the Town looked into, and was satisfied by, the reputation and experience of MRHE prior to the Town's approval.



Ridley & Associates Appraisal Services Limited – Peer Review

We understand that the Town engaged Ridley & Associates Appraisal Services Limited (“Ridley”) to complete a peer review of the MRHE appraisal. The peer review suggested that a lower unit rate of \$54,000 per lot would be more appropriate.

The indicated value of the Subject Land based on the Ridley peer review would imply the value of the Excess Parkland Dedication to be \$3,348,442 at November 3, 2015 as follows:

- 148 lots X \$54,000 per lot = \$7,992,000.
- \$7,992,000 divided by 7.8 acres= \$1,024,615 per acre.
- 3.268 acres X \$1,024,615 = \$3,348,442

Negotiated Appraisal Value

On March 21, 2016 Town staff recommended and Council approved a negotiated appraisal value for the Excess Parkland Dedication of \$1,118,582.28 per acre. The Executive Summary of the report provided to Council follows:

“The Town received an appraisal of the lands owned by Fonthill Gardens (attached). The value per acre of the lands was reported at \$1,126,582.28 in the appraisal done by MacKenzie Ray Heron & Edwardh.

Upon receipt of this appraisal, staff requested a peer review from our consultant Ridley and Associates. His comments on the appraisal are attached for Council’s information. The firm suggests that the cost of the land used in the Fonthill Gardens appraisal was too high at \$60,000 and that a value of \$54,000 would be appropriate given the firms rationale.

These comments were then sent to Fonthill Gardens’ owner David Allen for review. Attached is his response where he agreed to essentially split the difference on the value of the land parcels. Thus agreeing to accept a value of \$57,000 per lot for calculation purposes. This would reduce the per acre value of the land to \$1,118,582.28.

This revised value would be used to determine the over dedication of the parkland being conveyed to the Town for its own use.”

Comments

We are unsure of how the per acre value of \$1,118,582.28 per the report to Council was calculated. We have recalculated an implied value per acre of \$1,081,538.46 and the value of the Excess Parkland Dedication to be \$3,534,466 as follows:

- 148 lots x \$57,000 per lot = \$8,436,000
- \$8,436,000 divided by 7.8 acres = \$1,081,538.46 per acre
- \$1,081,538.46 x 3.268 acres = \$3,534,467.69

It appears Council approved a value of \$37,045.82 per acre (\$1,118,582.28 - \$1,081,538.46) above the amount intended, or a total value of \$121,065.74 (\$37,045.82 x 3.268 acres). However, the Town ultimately paid \$1,082,200.28 per acre, or \$3,536,630.50 for the full 3.268 acres.

8.1.5 Ownership History of the Dedicated Lands:

The Excess Parkland Dedication is comprised of two Parts of land. The roadway dedication is comprised of a further three Parts of land. Per the Roadway Agreement (Section 2.), the Excess Roadway Dedication results from a portion of roadway, “which will be twenty-eight (28) metres instead of the standard twenty-two (22) metres. The conveyance of that portion of Ceremonial Road by Fonthill Gardens which exceeds the twenty-two (22) metre width standard is referred to herein as the “Excess Dedications”. See Table 3 below for a description of each part as described in Plan 59R-15473, deposited under the Land Titles Act on December 10, 2015. Plan 59R-15473 has been attached as Appendix E.

Table 3			
Description of dedications per Plan 59R-15473			
Part	Lot	P.I.N.	Area (square metres)
1	Part of Thorold Township Lots 166 & 167	Part of 64063-0244(LT)	6,230.5
2	Part of Thorold Township Lot 166	Part of 64063-0248(LT)	6,995.5
3	Part of Thorold Township Lot 166	Part of 64063-0248(LT)	2,503.3
4	Part of Thorold Township Lot 167	Part of 64063-0244(LT)	6,450.8
5	Part of Thorold Township Lot 167	Part of 64063-0244(LT)	511.9

Fonthill Gardens Acquisition

We understand that the Parts 1 to 5 were acquired by FG in two separate transactions as follows:

- Per Parcel Register 64063-0244 (LT), Part 1, 4 and 5 were included in the sale of that parcel to Fonthill Gardens Inc. by Gardens Four Ltd. on March 31, 2005, for consideration of \$3,625,092
- Per Parcel Register 63063-0248 (LT) (the “Mamas Land”), Part 2 and 3 were included in the sale of that parcel to Fonthill Gardens (2015) Inc. by Denise Mamas on May 29, 2015, for consideration of \$1,789,555.

Town Acquisition

Details of when the Town assumed title of the Excess Parkland Dedication and Excess Roadway Dedication lands are included in the Table below:

Table 4		
Dates of registration of Part 1 - Part 5 by the Town		
Description	Consideration (\$)	Date of registration
PART 4 & PART 5 ON PLAN 59R-15473	2.00	September 12, 2016
PART 3 ON PLAN 59R-15473	2.00	September 12, 2016
PART 1 ON PLAN 59R-15473	2.00	September 12, 2016
PART 2 ON PLAN 59R-15473	2.00	September 12, 2016

The Secondary Plan designates certain land uses within the EFDP on schedule A5 – Land Use Plan, attached as Appendix F. The lands described in the Table above include parkland and roadway designated within Schedule A5 – Land Use Plan. We understand that the Official Plan was posted on the Town’s website, and was therefore readily available to the general public.

The Mamas Land

In order to execute the Secondary Plan, the Town required land for planned roadways and park spaces. The required lands included Part 1 – 5 as described in Table 3 above. Part 3 was required for roadway (including a portion of the Excess Roadway Dedication) and Part 2 was required for park space (a portion of the Excess Parkland Dedication). At the date the Official Plan was adopted by the Town on April 2, 2012, and the date the Official Plan was subsequently approved by the Ontario Municipal Board on July 18, 2014, the Mamas Land was owned by Denise Mamas.

We understand the following:

- The Town contacted Evan Mamas, who represented Denise Mamas, on March 4, 2014 to discuss the potential purchase of Part 2 and 3 by the Town. The Town was advised that Denise Mamas did not want to sell a portion of the parcel, but rather the entire 8.87 acres
- The Town contacted Mr. David Allen via email on March 4, 2014 to inquire if Fonthill Gardens may be interested in purchasing the Mamas Land
- The Town engaged Ridley & Associates to appraise the Mamas Land with an effective date of April 24, 2014. The appraisal (the “R&A Appraisal”), dated May 6, 2014, opined that the estimated market value of the Mamas Land was \$1,800,000 or \$202,931 per acre
- The Town provided the R&A Appraisal to FG



- In performing due diligence over the potential transaction, FG considered the planned use for the lands under the Secondary Plan and determined it would be unable to develop the Mamas Land for several years
- As a result, FG was not willing to purchase the Mamas Land and agree to dedicate Part 2 and 3 to the Town in advance of development, if they would not be compensated for the dedications in a timely manner.

Preliminary Agreement between Fonthill Gardens and the Town

On February 25, 2015, following discussions between the Town and FG, the Town sent a letter to David Allen (Attached as Appendix G), which included a proposed resolution for FG to acquire the Mamas Land and in turn for the Town to purchase those lands it required for the roadway and parkland from FG.

We note the following from that letter:

- It was proposed the Town would purchase from Fonthill Gardens those lands which exceed the required dedication of five (5%) percent of the area of the land being developed.
- It was noted however, the parkland reserve (of the Town) did not have sufficient funds to acquire those additional lands
- The Town proposed an alternative to reimburse Fonthill Gardens Inc. for any park dedication and/or development charges, which come due to the Town of Pelham over and above the park dedication addressed by the proposed agreement, for any lands within the Town on a dollar for dollar basis, until Fonthill Gardens has been completely reimbursed for the appraised value of the over dedication
- It stated that notwithstanding the provisions of the 2005 By-Law, it is the intention of the Town to appraise the lands to determine the cash-in-lieu requirement for parkland dedication as lands being ready for issuance of building permits
- Fonthill Gardens shall have the right to assign all or any portion of its right to reimbursement to other developers or builders for such compensation as is determined by Fonthill Gardens.

We understand the intent of “4.” of the Parkland Dedication Agreement for determining the value of parkland dedications in excess of the amount normally required, “*as of the day before the issuance of building permits*”, was to compensate FG for the opportunity cost of giving up property that it otherwise could have developed. However, the “Procedures for the Acquisition of Land for Park Purposes” of the 2015 By-law states “*Where the Town intends to acquire lands for park purposes (in excess of the required dedication), the Town will enter into any necessary negotiations with the property owner to establish the acquisition price. The acquisition price is subject to the approval of Council.*”

Comments

It appears the Town had flexibility to negotiate the acquisition price of the Excess Parkland Dedication rather than pay the appraised value at the building permit stage. We note the Town pays developers for excess dedications as at the building permit stage, regardless of actual current land use, to compensate them for their opportunity cost. However, since the Town proposed that FG acquire the



Mamas Land, and FG never intended to develop the excess dedications, it appears that FG's opportunity cost was not the ability to sell the land fully developed.

However, we note when cash-in-lieu of parkland dedication is received by the Town, the 2015 By-law requires the collection of funds at the value the day before the building permit is issued. Specifically, per "3." of "Process to Determine Land Values and Collection of Cash-in-lieu of Lands for Park Purposes" in the 2015 By-law, "*At such time as the subdivision agreement is prepared, the applicant may have the lots and/or blocks appraised by a qualified appraiser, wherein the value is to be determined as of the day before the day of issuance of a building permit*".

We understand, to be consistent, when acquiring the excess dedication the Town pays funds in the same manner – the value the day before the building permit is issued.

8.1.6 Financing of Excess Parkland Dedication and Excess Roadway Dedication with Municipal Credits

The Town agreed to provide Municipal Credits to FG for a dollar amount equal to the:

- Excess Parkland Dedication (Per F. of the Parkland Dedication Agreement),
- Excess Roadway Dedication (Per 4. of the Roadway Agreement),

Both of these land dedications were from the Mamas Land.

We understand the following:

- The Mamas Land had a total area of approximately 8.87 acres
- The full 8.87 acre parcel was acquired by FG for \$1,789,555.
- An agreement of purchase and sale was signed between FG and Denise Mamas on October 17, 2014.
- Title for the Mamas Land was transferred to FG on May 29, 2015.
- Part 2, as described in Plan 59R-15473, has an area of 6,995.5 square metres. Using a conversion factor of 0.000247105 acres per square metre, the area of Part 2 (acres) is $6,995.5 * 0.000247105 = 1.729$ acres. Using the negotiated unit rate per acre discussed in 8.1.4 of \$1,081,538, the Town should have issued approximately \$1,869,979 of Municipal Credits to FG, for the portion of Excess Parkland Dedication on the Mamas Land. We understand the actual unit rate per acre used by the Town was slightly higher at \$1,082,200.28, as discussed in 8.1.8 of this report, below.

Comments

It appears that the Town paid \$80,000 more for 1.729 acres (\$1.87 million) of the Mamas Land than FG paid for the entire 8.87 acres (\$1.79 million)

The Town paid an additional amount at a rate of \$300,000 per acre for the portion of the Excess Roadway Dedication on the Mamas Land

However, we understand at the date the Town entered into the Parkland Dedication Agreement (September 8, 2015), the appraised value of the Mamas Land, "*as of the day before the issuance of*



building permits”, per “4.” was unknown to the Town and FG. The MRHE appraisal appears to have been completed at a later date, December 31, 2015 with an effective date of November 3, 2015.

Use of Municipal Credits

Fonthill Gardens utilized Municipal Credits of approximately \$541,000 as follows:

Table 5		
Municipal Credits used by Fonthill Gardens		
Building per Site Plan Drawing	Municipal Payment Type	Municipal Credit Used (\$ value)
Building A - Food Basics (Marketplace)	Security Deposit	\$ 3,000.00
	Town Wide (Development Charge)	140,490.03
	Water (Development Charge)	25,319.08
	Sanitary Sewer (Development Charge)	33,347.08
subtotal		202,156.19
Building A1 (Marketplace)	Security Deposit	3,000.00
	Town Wide (Development Charge)	141,459.50
	Water (Development Charge)	25,493.80
	Sanitary Sewer (Development Charge)	33,577.20
subtotal		203,530.50
Building C (Marketplace)	Security Deposit	3,000.00
	Town Wide (Development Charge)	24,897.60
	Water (Development Charge)	4,487.04
	Sanitary Sewer (Development Charge)	5,909.76
subtotal		38,294.40
Building D (Marketplace)	Security Deposit	3,000.00
	Town Wide (Development Charge)	59,514.00
	Water (Development Charge)	10,725.60
	Sanitary Sewer (Development Charge)	14,126.40
subtotal		87,366.00
Site Plan Application Fee - Fonthill Gardens		5,186.00
Zoning Amendment Fee - Fonthill Gardens		4,100.00
Total		\$ 540,633.09

We understand the following:

- The Municipal Credits used by FG were used prior to the transfer of titles for the Excess Parkland Dedication and Excess Roadway Dedication lands to the Town, on September 12, 2016
- According to Daniel & Partners LLP the Municipal Credits were not payable by the Town until the Excess Parkland Dedication lands were transferred to the Town



- FG therefore received credit from the Town before entitled

Pursuant to the 2015 By-law, "Process to Determine Land Values and Collection of Cash-in-Lieu of Lands for Park Purposes", section 3, the payment to Fonthill Gardens for the Excess Parkland Dedication became payable by the Town upon registration of the Plan of Subdivision and the sale of the lands to the Town or other agreed upon settlement. The dedications were registered to the Town on September 12, 2016. The Subdivision Agreement between the Town and Fonthill Gardens was dated September 19, 2016.

8.1.7 Transfer of Municipal Credits

Per "2." of the Parkland Dedication Agreement and "5." of the Roadway Agreement discussed above, FG had the right to assign all or a portion of its Municipal Credits to other developers or builders.

We understand that:

- The balance of Municipal Credits assigned to FG for the Mamas Land exceeded FG's anticipated need for credit with the Town
- FG solicited other developers to purchase its Municipal Credits at a discount of 5%
- FG engaged a salesperson to assist with sales of Municipal Credits, who was paid a fee of a further 2% of gross sales
- On several occasions FG contacted the Town via email, to provide particulars of the Municipal Credits assigned to other developers or builders
- The Town had not established a system to track the balance of Municipal Credits sold and assigned to third parties
- At some point there was a disagreement between the Town Treasurer and FG, with respect to eligible expenses against which FG, or their assignees, could apply the Municipal Credits. On July 26, 2016 a letter was sent to Daniel & Partners LLP, by Thomas Richardson, Sullivan, Mahoney LLP (on behalf of FG). The letter indicated that there had been a recent disagreement between the Town Treasurer and Fonthill Gardens regarding allowable uses of the Municipal Credits
- On July 29, 2016 Daniel & Partners LLP sent an email to the Town Treasurer to address some questions regarding the Parkland Dedication Agreement. In particular, the Town Treasurer had questioned the right of Fonthill Gardens to assign the Municipal Credits to a third party. Per the email:
 - "1. The assignment is specifically permitted by paragraph 2 of page 2 of the Agreement;"
 - "2. The purpose of the Agreement was to allow the Town to pay for the over dedication of park land by Fonthill Gardens through granting credits, which will be applied as development progresses, rather than by paying for the parkland in full at the time of dedication to the Town. Absent this Agreement, the Town would have to pay the \$3 million over dedication amount when the subdivision is registered. There is no net effect on cash flow to the Town by having the credits assigned to other developers."



- “3. There has been no dedication of parkland by Fonthill Gardens to date. As such in my opinion there are no credits for Fonthill Gardens to sell to other developers. The Town should not give any credit to the developers who have purchased credits from Fonthill Gardens until such time as the East Fonthill Commercial Subdivision is registered and the parklands transferred to the Town.”
- As a result of the confusion between the Town and FG on the use of the Municipal Credits as well as the claim of cumbersome administration for potential transferees, FG encountered difficulty in selling the Municipal Credits. There were ultimately two developers who purchased Municipal Credits from FG at the 5% discount: Antonio Nuziato (\$15,567.43), and U. Lucchetta Construction Limited (\$28,611).

Municipal Credits were used by the assignees as follows:

Table 6		
Municipal Credits used by Assignees of Fonthill Gardens		
Developer	Municipal Payment Type	Municipal Credit Used (\$ value)
Antonio Nuziato		
Building Permit No. 20160328	Town Wide (Development Charge)	\$ 11,974.04
	Water (Development Charge)	1,544.98
	Sanitary Sewer (Development Charge)	2,048.41
subtotal		15,567.43
U. Lucchetta Construction Limited		
Building Permit No. 20160403	Town Wide (Development Charge)	7,521.00
	Water (Development Charge)	865.00
	Sanitary Sewer (Development Charge)	1,151.00
Building Permit No. 20160404	Town Wide (Development Charge)	7,521.00
	Water (Development Charge)	865.00
	Sanitary Sewer (Development Charge)	1,151.00
Building Permit No. 20160405	Town Wide (Development Charge)	7,521.00
	Water (Development Charge)	865.00
	Sanitary Sewer (Development Charge)	1,151.00
subtotal		28,611.00
Total		\$ 44,178.43

8.1.8 Payout of the Fonthill Gardens Municipal Credits

On September 20, 2016 \$3,027,618 was paid to FG by electronic funds transfer from the Town’s operating bank account to buyout its outstanding Municipal Credits outlined as follows:



Table 7		
Reconciliation for payout of outstanding Municipal Credits, per the Town		
Excess Dedications		
Excess Parkland Dedication	\$	3,536,630.50
Excess Roadway Dedication		137,587.08
Credits Issued to Fonthill Gardens		3,674,217.58
Municipal Credits used by Fonthill Gardens		
Bulding A1		203,530.50
Building A		202,156.00
Building C		38,294.40
Building D		87,366.00
Site plan application fee		5,186.00
Zoning amendment fee		4,100.00
Subtotal		540,632.90
Municipal Credits used by Fonthill Gardens' Assignees		
Antonio Nuziato		15,567.43
U. Lucchetta Construction Limited		28,611.00
Subtotal		44,178.43
Credits used by Fonthill Gardens and their Assignees		584,811.33
Difference		3,089,406.25
2% Discount		(61,788.13)
Balance Outstanding	\$	3,027,618.12

We understand that:

- The calculation for the opening balance of Municipal Credits of \$3,536,630.50 was provided to the Town by FG in a letter dated March 22, 2016. The difference between this balance and our calculation in 8.1.4 above using the negotiated unit price per lot of \$57,000 (\$3,534,466) is \$2,164.50
- The calculation for the Excess Roadway Dedication amount of \$137,587.08 was calculated by a third party consultant, based on a road width of 28 metres, compared to a width of 20 metres. The area of the Excess Roadway Dedication was multiplied by \$300,000 per acre, consistent with section "4." of the Roadway Agreement



- The calculation of Municipal Credits used by FG and their assignees was prepared by the Town's Director of Planning and Development
- FG agreed to discount the balance of Municipal Credits by 2%.
- The Town Treasurer approached FG to propose a cash payment for the outstanding Municipal Credits.
- On August 22, 2016, a report to Council recommended, "*that Council approve staff to proceed with a short-term loan in an amount no higher than \$3,500,000 for payment to Fonthill Gardens for the value of Parkland over dedication within the East Fonthill Lands*". Relevant sections of the report are outlined below:

a) Overview:

At the time of the agreement it was understood that Fonthill Gardens would draw down the credit with amounts owing for development costs within the East Fonthill Lands.

However, Fonthill Gardens understood that they would be able to use up the credits throughout the whole Town of Pelham and sell them to any developer within the Town.

This causes hardship for the Town of Pelham due to the fact that the Town will not be collecting any cashflow from those developers that Fonthill Gardens sell too. This will significantly impact on the amount of funds the Town has to provide for other projects including our own development within the East Fonthill lands.

In addition the process of a consultant meeting with developers to sell Town Development Charges credit creates a bad image for the Town implying that he may be acting on the Town's behalf.

Finally, Town staff are impacted enormously with administrative requirements. This includes building department, planning department, and finance. There is no recovery from Fonthill Gardens of the extra work required to track the process of applying the over dedication to other areas within the Town.

If the Town were to short term finance the amount owing to Fonthill Gardens then essentially no cash would have to leave the Town and the Town would then be able to collect all revenues from other developers.

The over dedication amount will be recovered from other developers within the East Fonthill Lands in the future and it is anticipated that this will be completely recovered within the next 5 to 10 years.

Staff feel that it is the best interest of the Town to settle the agreement on the Parkland over dedication with a financial instrument to ensure our cash flow remains healthy for Town purposes.

- During the presentation of the report to Council, Council inquired as to whether the Town would receive the 5% discount offered to other developers by Fonthill Gardens. Council directed the CAO to begin negotiations with Fonthill Gardens, and to provide an update in September, 2016.
- On September 19, 2016, the Chief Administrative Officer (“CAO”), former Treasurer and Town Clerk met with Council to discuss the payout of the Municipal Credits.
- The Town Treasurer informed Council that a debenture would not be required as the payout would be financed internally. The Mayor requested Council be provided more information on how the payout would be financed and asked that the former Treasurer update Council via email. The payout of the Municipal Credits was approved by Town Council at that meeting, and the CAO was instructed to proceed.

Comments

It appeared the payment for the Excess Roadway Dedication of \$137,587.08 was greater than required subject to the Roadway agreement because it paid based on an excess of eight (8) metres (28-20) versus an excess of six (6) metres (28-22).

We noted that:

- “2.” of the Roadway Agreement, stated “*the conveyance of that portion of Ceremonial Road by Fonthill Gardens which exceeds the twenty-two (22) metre width standard is referred to herein as the “Excess Dedications”*”.
- The calculation of the area (acres) of the Excess Roadway Dedication by the third-party consultant, as provided to KPMG, used a standard road width of twenty (20) metres.

As a result, the Town requested the consultant recalculate the area of the Excess Roadway Dedication. It was determined the Town overpaid FG by \$32,587.08 (approximately 24% of \$137,587.08). We understand FG agreed to reimburse the Town for that overpayment.

8.1.9 Financial Accounting for Municipal Credits

Consistent with the 2015 By-law and pursuant to the provisions of Section 42 of the Planning Act, parkland dedication is required as a condition of development or redevelopment of lands within the Town. Where lands are not required for park purposes, the Town requires cash-in-lieu of parkland dedication. Parkland dedication or cash-in-lieu thereof is required in the amount of two per cent (2%) for commercial or industrial and five per cent (5%) in all other cases. Alternatively, for residential development proposals, Council may require land to be conveyed for park or other public recreational purposes at a rate of up to one (1) hectare for each 300 dwelling units. We understand that the accounting entry for parkland dedication, or excess parkland dedication is dependent on whether the dedication consists of land or cash-in-lieu.



Typical Town Accounting Entries for Cash-in-lieu of Parkland Dedication:

We understand at the time cash-in-lieu of parkland dedication is received by the Town, an accounting entry is booked to recognize the cash received as an asset, and to create a corresponding liability (deferred revenue). As an example, the accounting impact of \$100 of cash-in-lieu of parkland dedication received by the Town is as follows:

Table 8			
Accounting for receipt of cash-in-lieu of parkland dedication			
Financial statement caption	Asset	Liability	Revenue
Cash	\$ 100	-	-
Deferred revenue - obligatory reserve funds		(100)	
Total	\$ 100	(100)	-

Since accounting criteria to recognize the cash received as revenue have not been met until such time as the cash is used by the Town in accordance with “Municipal Allocation of Funds” per the 2015 By-Law, a corresponding liability is recorded (deferred revenue). When the cash is subsequently used by the Town for qualifying parkland expenditures, an accounting entry is booked to recognize the asset purchased or expense incurred with a corresponding decrease of cash, as well as to recognize revenue with a corresponding decrease in deferred revenue. See Table 9 below for the net accounting impact of using \$100 of previously collected cash-in-lieu of parkland dedication to purchase a qualifying asset.

Table 9			
Accounting for use of obligatory parkland reserve for qualifying parkland expenditures			
Financial statement caption	Asset	Liability	Revenue
Tangible capital assets	\$ 100	-	-
Cash	(100)		
Contributed tangible capital assets			(100)
Deferred revenue - obligatory reserve funds		100	
Total	\$ -	100	(100)

We understand that deferred revenue is recognized as revenue at the time of a qualifying parkland expenditure since the Town has met the applicable accounting criteria for revenue recognition at that time.



Typical Town Accounting Entries for Parkland Dedication:

We understand that when parkland is dedicated by a developer, an accounting entry is booked to recognize the asset (the parkland received from the developer), as well as to recognize revenue since the applicable accounting criteria for revenue recognition have been met at that point. See the Table below for the accounting impact of receiving a parkland dedication with a value of \$100 from a developer.

Table 10				
Accounting for receipt of parkland dedications				
Financial statement caption		Asset	Liability	Revenue
Tangible capital assets	\$	100	-	-
Contributed tangible capital assets		-	-	(100)
Total	\$	100	-	(100)

The above accounting entry records the appraised value of the land dedicated to the Town, and recognizes a corresponding amount as revenue.

Accounting Entries for the Excess Parkland Dedication by Fonthill Gardens:

We understand the following:

- The Town initially booked accounting entries to record the acquisition of the excess dedications with Municipal Credits
- Following the September 20, 2016 payout of outstanding Municipal Credits the Town booked additional accounting entries to recognize the impact of the payment to Fonthill Gardens
- All entries are reflected in the Financial Statements for the year ended December 31, 2016

The net financial statement impact of the accounting entries booked by the Town for the Excess Parkland Dedication and Excess Roadway dedication for the year ended December 31, 2016 is as follows:



The balance of Contributed tangible capital assets per the financial statements was \$4,928,757 for the year ended December 31, 2016 as follows:

Table 12		
Breakdown of Contributed tangible capital assets per the audited Consolidated Statement of Operations for the year ended December 31, 2016		
Contributed tangible capital asset		
Excess Stormwater Management Pond Dedication (per 8.1.11)	\$	1,453,915.19
Excess Parkland Dedication		3,474,842.25
Total	\$	4,928,757.44

We understand that:

- The Excess Parkland Dedication was under construction (not available for use) as at December 31, 2016
- The asset (land) of \$3,612,429, consisting of the \$3,474,842 Excess Parkland Dedication and the \$137,587 Excess Roadway Dedication has been included in the balance of “Construction in process” in Schedule 2 of the Financial Statements for the year ended December 31, 2016
- The amount of Excess Parkland Dedication per Table 12 is the \$3,536,631 Excess Parkland Dedication per Table 7, net of the \$61,788 (2%) discount on outstanding Municipal Credits per Table 7, as discussed in section 8.1.8 above
- The Excess Stormwater Management Pond Dedication is discussed in 8.1.11 below.

One financial statement impact of the accounting entries per Table 12 above was the creation of an asset (Receivables – FG PkInd Overdedication) by the Town, with a balance of \$3,612,429. We understand when cash-in-lieu of dedications is received from developers in the future, the Town intends to reduce the receivable balance by the amount received.

Per the Town’s accounting policy “Deferred revenue – obligatory reserve funds and Development Charges”, included in section 6.1 above, we understand the dollar value of Municipal Credits used by FG and their assignees for payment of development charges should have been added to the liability balance of Deferred revenue – obligatory reserve funds, until such time as qualifying expenditures were incurred. The \$563,525 Deferred Revenue – Development Charges liability balance per Table 12 above agrees to the balance of development charges paid to the Town by FG per Table 5 (\$519,347) and development charges paid to the Town by Fonthill Gardens’ assignees per Table 6 (\$44,178). These amounts are included in Deferred revenue – obligatory reserve funds at December 31, 2016.

8.1.10 Compliance with the Town By-laws and Municipal Legislation

The Town’s actions in entering into the Parkland Dedication Agreement does not appear to contravene municipal legislation. However, FG and their assignees used the Municipal Credits to



satisfy payment of fees payable to the Town, consistent with section F of the Parkland Dedication Agreement, at a date before FG had dedicated the park and road lands to the Town. We are unsure if this contravened any By-laws or municipal legislation.

Per our discussion with Daniel & Partners LLP, we understand the following:

- The Town wanted to move ahead in the development of the EFDP at a pace that was ahead of some developers, including FG.
- There was land required by the Town, which would typically be acquired from a developer later in the process
- The Town had some alternate routes to acquire the land:
 - Purchase the land using funds from the parkland reserve
 - Expropriate the land
- The Parkland Dedication Agreement was not done under the Development Charges Act, since that act is very specific regarding granting credits
- There was no By-law or legislation that prevented the Town from entering into the Parkland Dedication Agreement. The Town had broad authority to enter into the agreement with Fonthill Gardens, as long as the agreement did not contravene any portion of the Municipal Act.
- In drafting the Parkland Dedication Agreement, it was determined that paying for the Excess Parkland Dedication using Municipal Credits did not constitute borrowing since:
 - Land was obtained for credits against future fees
 - Fonthill Gardens had no authority to compel the Town to repurchase the Municipal Credits

8.1.11 River Realty (Stormwater Management Pond)

We understand the following:

- As part of the EFDP, River Realty performed an oversizing of a storm water management pond and contributed land to the Town (the “Excess Stormwater Management Pond Dedication”).
- In lieu of cash, and similar to the arrangement with Fonthill Gardens, River Realty was provided with Municipal Credits of approximately \$1.5 million for future use and/or sale to other developers as desired.
- These credits were offset by approximately \$449,000 which River Realty owed to the Town.
- No arrangement was made for the payout of these credits.
- River Realty requested that their balance of outstanding Municipal Credits of approximately \$1 million be passed on to residents taking out building permits in their development area, in the form of reduced payment for their development charges.



8.2 Questions Submitted to KPMG by Members of the General Public

Throughout the course of our investigation, KPMG received emails from approximately 50 concerned members of the general public via the “townofpelhaminfo@kpmg.ca” email address, as well as directly via the KPMG website. These emails contained a variety of information/comments and 160 questions with additional sub-questions.

Due to the anonymous nature of electronic communication, and to ensure that individuals who submitted information remain unidentified in this report, we are unable to comment on the demographics of who sent the emails.

The questions received by KPMG have been listed in detail on Schedule 2. In addition to comments on that schedule, themes and responses to those questions (where not addressed earlier in this report) are outlined below.

8.2.1 Finances of the Town

Budget

Detailed Information on the Town’s operating budget for 2015 to 2017 is available on the Town’s website at the following link: <http://www.pelham.ca/en/services/Budgets-and-Reports.aspx>. We have provided a short summary below:

Table A			
Town operating budget 2015 to 2017			
	For the years ended December 31		
	2017	2016	2015
Revenues			
Non-tax	2,448,022	2,168,572	2,067,947
Taxation	12,073,374	11,341,845	10,368,078
Total Revenues	14,521,396	13,510,417	12,436,025
Total Expenditures	14,521,396	13,510,418	12,436,026
Net expenses	-	1	1

Liabilities

Below we have outlined a summary of the Town’s liabilities per the audited financial statements for the years ended December 31, 2015 and 2016:



Table B

Liabilities of the Town per the Audited Financial Statements

	For the year ended December 31	
	2016	2015
Bank indebtedness		
Revolving line of credit	200,000	1,750,000
Demand loan	1,600,000	1,600,000
	1,800,000	3,350,000
Accounts payable and accrued liabilities	7,712,420	3,738,556
Other liabilities	1,429,957	971,712
Deposits and deferred revenue	1,864,319	157,698
Deferred revenue - obligatory reserve funds		
Development charges	1,948,003	563,556
Parkland	1,392,503	933,991
Other	58,478	434,942
	3,398,984	1,932,489
Long-term debt		
CIBC bank loan	-	1,088,444
Debt issued by Region of Niagara	21,310,239	7,306,928
	21,310,239	8,395,372
Employee benefit obligations	399,342	316,529
Total	37,915,261	18,862,356

We note the following:

- The balance of the Town's CIBC operating line of credit was \$200,000 at December 31, 2016 and \$1,750,000 at December 31, 2015. We understand, as at November 29, 2017 the balance was \$nil. Since the Town's fiscal year end is December 31, we are uncertain what the year end balances of liabilities will be for 2017
- The Town's Demand loan was \$1,600,000 at December 31, 2016 and \$1,600,000 at December 31, 2015
- The Town's Accounts payable and accrued liabilities was \$7,712,420 at December 31, 2016 and \$3,738,556 at December 31, 2015
- Other liabilities were \$1,429,957 at December 31, 2016 and \$971,712 at December 31, 2015
- Deposits and deferred revenue was \$1,864,319 at December 31, 2016 and \$157,698 at December 31, 2015
- The balance of the Town's Deferred revenue – obligatory reserve funds was \$3,398,984 at December 31, 2016 and \$1,932,489 at December 31, 2015
- The balance of the Town's Long-term debt was \$21,310,239 at December 31, 2016 and \$8,395,372 at December 31, 2015



Debentures

Below we have outlined a summary of the Town's debentured debt for the years ended December 31, 2015 and 2016 allocated between operating debt, parkland debt and development charges debt. We understand that the allocations are based on the source of funds received by the Town which will be used to pay down the principal and interest on the debt. The debenture balances are per the Town's amortization schedules, and the total debentured debt ties to the Town's Long-term debt on the audited financial statements.

Table C		
Debentures payable of the Town		
	For the years ended December 31	
	2016	2015
Long-term debt per amortization schedules		
Operating debt	14,219,617	4,332,771
Parkland dedication debt	69,000	91,000
Development charge debt	7,021,622	3,971,600
Total	21,310,239	8,395,371

Since the Town's fiscal year end is December 31, we are uncertain what the year-end balance of liabilities will be for 2017. However, based on our discussions with the Town we have summarized the expected long-term debt as at December 31, 2017 to be approximately \$33.5 million as follows:

Table D	
Expected debentures payable of the Town (assuming no further issues in 2017)	
	For the year ended December 31
	2017
Long-term debt per amortization schedules	
Operating debt	15,088,309
Parkland dedication debt	47,000
Development charge debt	18,348,133
Total	33,483,442

8.2.2 Independence

KPMG is independent of the Town and our report has been prepared in an independent and objective manner. Moreover, our fees for the engagement are not contingent upon our findings or any other action or event resulting from the use of our report.

We note that we have received public comments that KPMG is not independent because KPMG is the financial statement auditor for the Town. As indicated in the financial statements, Deloitte is auditor for the Town, not KPMG.

In order to address the concerns of the general public, KPMG has:

- addressed all questions raised in the Voice article, "Town of Pelham Forensic Audit: What Must Be Asked", posted on the Voice's website on October 2, 2017 at <http://www.thevoiceofpelham.ca/town-of-pelham-forensic-audit-what-must-be-asked/>
- addressed questions (where possible within scope of conducting this investigation) raised by concerned members of the general public received directly by KPMG,

8.2.3 Planned use of Excess Parkland Dedication lands

We understand that as at November 29, 2017 the Excess Parkland Dedication is under construction. We understand that this land will eventually be used as parkland, consistent with the Secondary Plan but are uncertain when the lands will be ready for use.

8.2.4 Reserves, reserve funds and deferred revenue

In response to the questions received with respect to reserve funds we would refer you to section "8.4 Reserves, reserve funds and deferred revenue" in KPMG's report on "Forensic Review of Town Finances August 2008 to May 2017", dated December 18, 2017 ("KPMG Town Finances Report").

As outlined in that report we note the following:

- Municipal legislation requires that the Town hold cash balances to support the balance of account, "deferred revenue - obligatory reserve funds"
- The balance of this account was approximately \$1.9 million at December 31, 2015 and approximately \$3.4 million at December 31, 2016.
- At both of those year ends, the cash balance was below the obligatory reserve limit. Therefore, the Town appears to be offside in respect of this obligation as at both of those year ends.
- It is uncertain what the ramifications are of not meeting this requirement. We understand that the Town intends to repay the balance of obligatory reserve funds with interest.

8.2.5 Was there a 20% premium paid over the appraised value of the Excess Parkland Dedication?

We understand that questions by the general public regarding an alleged 20% premium paid over the appraised value of the Excess Parkland Dedication resulted from the article, "Town of Pelham Forensic Audit: What Must be Asked", published by the Voice of Pelham ("the Voice") on October 2, 2017. The article was updated by the Voice on October 7, 2017, and now includes the following retraction at the bottom of the article:

"Updated October 7, 2017: An inartfully phrased summary of a blog post by Mayor Augustyn has been removed from this list of questions. The Mayor did not originally state that property acquired through the Town's land-for-credits scheme was valued 20% higher at time of

purchase, but rather that in light of real estate prices rising since this deal was made, the price agreed to then seems relatively low in today's market. While we strongly disagree that the price paid then was reasonable, or that it would be reasonable today, even after recent spikes in property prices, we did not accurately quote the Mayor's blog post. We regret the error."

For information on the appraisal of the Excess Parkland Dedication, see 8.1.4 of this report, above.

8.2.6 Town financing of 32 acres

With respect to whether the Town made payments from the parkland reserves to pay principal and interest payments on 32 acres of land owned by the Town, we understand the following:

- Per the Town's 2015 debenture schedule, principal and interest payments related to the purchase of 32 acres at the corner of Rice Road and Highway 20 was paid from the Town's operating budget
- Per our discussion with the Town Treasurer and Town Deputy Treasurer, principal and interest on the loan for this land has not been paid using parkland reserves
- The balance of the loan for this land purchase was fully repaid during fiscal 2016

8.2.7 Development activities of Mr. David Allen

With respect to development activities of Mr. Allen in Fonthill, we understand the following:

- Mr. David Allen is the owner of F G
- We are uncertain of the total land holdings FG or Mr. Allen have within the Town
- Per "Schedule B" of the Purchase Option and Cost Sharing Agreement between FG and the Town dated March 17, 2014, the following is the legal description of the FG Lands:

"Part of Lots 166 & 167, Township of Thorold & Part of Lot 3, Plan 717, being Part 2 on Reference Plan 59R-12687, except Part 7 on Reference Plan 59R-14224, subject to an Easement in Gross over Part of Lots 166 & 167, Thorold Township, being Parts 6 & 8 on Reference Plan 59R-14224, as in SN311461, Town of Pelham

PIN 64063-0244 (LT)"

8.2.8 Interviews of former Town employees and Councillors

In conducting our investigation we did not conduct interviews with former employees of the Town. However, we were provided with and had access to relevant correspondence of former employees, including copies of email communications. For further information on the scope of our review, see section 3 and Appendix A of this report above.



8.2.9 KPMG forensic investigation

Regarding the Town's process to engage KPMG to complete this forensic investigation, we understand that:

- The Town went out for a Request for Proposal (RFP) for financial statement audit services in 2016
- Three submissions were received by the Town, including KPMG
- Deloitte was selected as the Town's financial statement auditor
- KPMG was the runner-up in the RFP process
- Since Deloitte is the Town's auditor, they were not requested to complete the forensic investigations
- Section 25(2) of the Town's purchasing policy provides for special circumstances where Council may authorize the acquisition of services, if Council is of the opinion that there are special circumstances in relation to a proposed acquisition that a reasonable person would consider sufficient to warrant a non-competitive acquisition
- In consideration of the circumstances described above, the Town selected KPMG to complete the forensic investigation without going out for proposal.

8.2.10 Questions raised by the Voice

Where possible, KPMG has addressed questions raised by the Voice in the article, "Town of Pelham Forensic Audit: What Must be Asked", published online on October 2, 2017, within this report and within our KPMG Town Finances Report.

8.2.11 Fraud at the Town

Throughout this investigation, and the investigation carried out in preparing our KPMG Town Finances Report, we have not found any indication of fraud at the Town.

8.2.12 Ball Construction Costs – Community Centre

Although outside the scope of our investigation, during our review we obtained the detail per the Town's accounting records of all payments made to date to Ball Construction regarding the Community Centre as at November 16, 2017. As at that date, payments to Ball Construction totalled \$15,207,860.50.

8.2.13 Mr. Rainer Hummer

During a meeting of Town Council on September 5, 2016, the Town CAO presented the Town's rebuttal to public statements regarding the Town made by Mr. Rainer Hummel. From our discussions with representatives of the Town we understand that:

- Mr. Hummel is a past and present developer in the Town

- At one point Mr. Hummer owned approximately 20 acres of land in East Fonthill.

8.2.14 Parkland dedication re the Marketplace development

From our discussions with Daniel & Partners LLP and representatives of the Town, we understand:

- Per the 2015 Parkland By-law, a parkland dedication or cash-in-lieu would become payable by the developer at the time of application for building permits within the development
- At the time of the Parkland Dedication Agreement, there had been no transactions or events that triggered a regular parkland dedication or cash-in-lieu payable by FG
- There was therefore no requirement for FG to grant parkland dedication to the Town above the Excess Parkland Dedication at the time of the Parkland Dedication Agreement

From our discussions with the Town Director of Planning and Development, we understand:

- Parkland dedications and/or cash-in-lieu have become payable by FG related to the Marketplace development
- As a result of a request by KPMG, the Town recently reviewed the calculation of 2% of parkland dedication required by FG for the Marketplace development (under the 2015 By-law). The Town determined that the land dedicated by FG represented only 1.49% of the required 2% of land under development (a shortfall of 0.51%, or 221.74 square metres)
- Using a conversion factor of 0.000247105 acres per square metre, the total area of the shortfall (acres) is $221.74 \text{ square metres} * 0.000247105 = 0.0548 \text{ acres}$
- We understand that FG has indicated to the Town that they will provide the Town with cash-in-lieu for this shortfall. At the date of this report we were uncertain of the dollar amount, however; we understand it could be in excess of \$50,000.
- We are unsure what caused the initial error in this calculation

8.2.15 Town policy 'tool' used for Excess Parkland Dedication

From our discussions with the Town's Director of Planning & Development we understand that:

- The Town had broad authority under the Municipal Act to enter into the Parkland Dedication Agreement
- This tool falls under paragraph (i) of Policy B.7.9.4.3, specifically, "*the land acquisition powers authorized by public statutes*"

8.2.16 Town compliance with sub-section 17-20 of the Planning Act

Section 42 of the Planning act was amended December 3, 2015, with a date in force of July 1, 2016. Per the amendment, Section 42 of the Planning Act was amended to include (17) – (20). From our

discussions with the Treasurer and Deputy Treasurer, we understand that the Town plans to comply with Section 42 regarding the year ended December 31, 2016. Per the Treasurer the submission for the year ended December 31, 2016 was not due until this year, since the information required is per the audited financial statements.

8.2.17 Value of the KPMG contract

As at November 30, 2017, the total billings for the engagement under this report and the KPMG Town Finances Report were \$80,636.50 (exclusive of HST).

8.2.18 The Haist Street Parkland

The question of whether the sale of the Haist Street parkland is necessary is outside of the scope of this investigation. However, from our discussions with representatives of the Town, we understand that:

- As at October 31, 2017, the Haist Street property had not been declared as surplus, and cannot be sold until such time as it is
- The sale of the Haist Street property has not been included in the budget for the planned Community Centre

8.2.19 Increasing amortization period to reduce payments

This question is outside the scope of our investigation. However, from our discussions with representatives of the Town we understand that per the Municipal Act, section 408 (3), the period of long-term borrowing is restricted to the expected life of the underlying capital asset. Specifically, per the Act,

“The term of a debt of a municipality or any debenture or other financial instrument for long-term borrowing issued for it shall not extend beyond the lifetime of the capital work for which the debt was incurred and shall not exceed 40 years.”

We understand that:

- The debentures for the Community Centre were borrowed through Infrastructure Ontario, with an amortization period of 30 years
- Infrastructure Ontario offers terms with a maximum length of 30 years
- As a result, it would not be possible to extend the term of the debt in order to increase the amortization period for the Town's debt

8.2.20 Conflict of Interest re land transactions: Mayor and Council

Throughout this investigation, as well as our investigation in preparing the KPMG Town Finances Report, we have not found any indication that the Mayor, or anyone connected to the Mayor, gained

financially from the activities of the Town regarding transactions under the scope of our investigation.

8.2.21 Community Centre

Questions related to the Community Centre are outside of the scope of this investigation. However, from our discussions with representatives of the Town we understand the original budget for the community centre and changes to the budget due to change orders are posted on the Town's website. The most recent update is provided in a Monthly Project Status Report submitted to Infrastructure Ontario for the month ending November 30, 2017 which can be viewed at the following link: <http://www.pelham.ca/en/resources/PCCOC/Monthly-IO-Report---November.pdf>

8.2.22 The contingency fund for the Community Centre

Questions related to the Community Centre are outside of the scope of this investigation. However, from our discussions with representatives of the Town we understand the following:

- The contingency fund for the Community Centre was initially budgeted for \$500,000
- The balance reported to Infrastructure Ontario had increased to \$1,706,099 as a result of a positive variances (savings) on the first tender issued for the project
- As other tenders were completed the contingency fund moved to approximately \$500,000 as a result of negative variances (cost overages)
- Since that time, the Town has been using the contingency fund for approved change orders, as approved by the Pelham Community Centre Oversight Committee.

8.2.23 Predevelopment costs of Community Centre

This question is outside the scope of our investigation. However, from our discussions with representatives of the Town we understand that costs for predevelopment of the Community Centre were included in the approved 2013 Capital Budget. Specifically, per page 12 of the budget,

"funds are being earmarked for predevelopment costs for new municipal facilities. The amount of \$1,000,000 will only be available for expenses related to any design or implementation of a new municipal facility upon Council's approval of staffs recommendations."

Per the Town Treasurer, this is item REC 12-13 of the "Department of Community and Infrastructure Services - Parks and Recreation 2013 Proposed Capital Budget Summary" on page 32 of the 2013 Capital Budget.

8.2.24 Forensic investigations

As discussed above, KPMG has completed two forensic investigations for the Town of Pelham in 2017, including this current engagement. Our engagement team is not aware of any other engagements completed by KPMG for the Town.

Regarding our first investigation, KPMG was engaged by Daniel & Partners LLP on July 24, 2017 LLP in contemplation of litigation with an identifiable individual and findings were included in a report



(previously referred to as KPMG Town Finances Report) dated August 31, 2017 which was presented in a Closed Meeting on September 5, 2017. Following a request by the Town, KPMG agreed to release findings contained in that first report excluding personal information. Those findings have been included in an additional report, "Forensic Review of Town Finances August 2008 to May 2017", dated December 18, 2017.

KPMG was then engaged by the Town on October 6, 2017 for which our findings are outlined in this report.

8.2.25 Fees paid to Mr. David Allen

This question is outside of the scope of our investigation. However, from our review of general ledger detail of payments made from the Town to FG, it appears FG and Mr. Allen have been paid approximately \$3,037,833.68), to December 6, 2017 (which includes the payout of Municipal Credits). These payments were made in the period of November 13, 2013 to September 20, 2016.

8.2.26 Fees paid to Mr. Stephen Kaiser

This question is outside of the scope of our investigation. However, from our review of general ledger detail of payments from the Town to Kaiser Associates, total payments approximated \$17,284, as at December 6, 2017. This balance is made up of a payment on December 5, 2013 (\$16,783.89) and a payment on April 12, 2017 (\$500).

8.2.27 Contract Fee – Corporate Donations

This question is outside the scope of our investigation. However, we understand the contract fee with Interkom for fundraising of the \$3 million in corporate donations is \$300,000.

8.2.28 Second Ice Pad for Community Centre

This question is outside the scope of this engagement. However, from our review of related documentation we understand the following:

- The Excess Parkland Dedication and Excess Roadway Dedication lands discussed in our report are not related to the addition of a second ice pad at the Community Centre
- It is considered best practice that a municipal ice pad is not developed until anticipated utilization of prime time ice exceeds 75% for a full ice season
- In their January, 2014 Arena Facility Provision Strategy report, LeisurePlan International Inc. ("LeisurePlan") concluded that the Town may not meet the above utilization for a second ice pad in the near future (2018/2019)
- Additional research conducted by the Town identified additional demand for a second ice pad, including: additional prime time required by Pelham Minor Hockey and the establishment of Pelham Panthers Junior Hockey Club
- As a result of the above changes to demand, the Town engaged LeisurePlan to update the 2014 findings



- Additional research conducted by LeisurePlan included a survey of ice/arena user groups to identify any potential changes in groups' ice time requirements, since the time of 2013 research by LeisurePlan for their initial report
- Groups surveyed by LeisurePlan in 2015, but who were not surveyed in 2013 included: Pelham Panthers Junior Hockey Club, E.L. Crossley Secondary School, March Hockey and Pelham Art Festival
- In their Arena Facility Provision Strategy – 2015 Update report, LeisurePlan concluded that the Town would reach 69%-77% during prime time during the fall, winter and spring ice season by the near future (2018/2019).



9 Standards and Independence

This report was prepared by Tyler Reavell and Karen Grogan, CPA, CA•IFA, CBV, CFF in accordance with the practice standards of the Canadian Institute of Chartered Business Valuators.

We believe that we are independent of the Town and that we have prepared our report in an independent and objective manner. Moreover, our fees for this engagement are not contingent upon our findings or any other action or event resulting from the use of this report.

A handwritten signature in black ink, appearing to read 'Karen Grogan', is written over a faint, light-colored circular stamp.

Karen Grogan, CPA, CA•IFA, CBV, CFF
Senior Vice President

Direct Dial (519) 747-8223



Schedule 1 – Timeline of Events

Town of Pelham		Schedule 1
Timeline of Transactions - East Fonthill Development Project		
March 31, 2005 to September 30, 2016		
Date	2005	
March 31, 2005	Title for a parcel of land in East Fonthill is transferred to Fonthill Gardens from Gardens Four Ltd. for consideration of \$3,625,092. A portion of this land was eventually sold to the town for parkland and roadway - the Excess Parkland Dedication and Excess Roadway Dedication.	
2012		
April 2, 2012	The Town Council adopts a new Official Plan which includes descriptions and drawings depicting planned use in East Fonthill, including roads and parks.	
2014		
March 4, 2014	The Town CAO contacts Evan Mamas, representative of Denise Mamas, to inquire about purchasing a portion of an 8.87 acre parcel of land, upon which the Town plans to build a road and park per the Official Plan. This would become part of the Excess Parkland Dedication and Excess Roadway Dedication. We understand Denise Mamas is unwilling to sell a portion of the 8.87 acre parcel rather she only wants to sell the complete lot.	
	The Town CAO contacts Fonthill Gardens' owner David Allen, to inquire if he is interested in purchasing the Mamas Land (to develop and transfer a portion to the Town). Mr. Allen advised he would think about it and asked about the price.	
March 31, 2014	The Town enters into the Purchase Option and Cost Sharing Agreement	
April 24, 2014	The Town Treasurer engages an appraiser to appraise the Mamas land. The 8.87 acre parcel is appraised at \$1.8 million as at April 24, 2014.	
July 18, 2014	The OMB issues a written decision to approve the Town's new Official Plan, which depicts planned land use of the Excess Parkland Dedication within Schedule A-5 of the Official Plan.	
October 17, 2014	Fonthill Gardens signs an Agreement of Purchase and Sale for the 8.87 acre parcel of Denise Mamas land (The Agreement of Purchase and Sale is extended on November 21, 2014, and again on January 25, 2015)	
2015		
February 25, 2015	The Town CAO sends a letter to David Allen to confirm an understanding of a transaction to take place between Fonthill Gardens and the Town. Fonthill Gardens will buy the Mamas land and dedicate park and road lands early, in exchange for credits with the Town. Per the letter, lands which are subject of the agreement are to be appraised, "as being ready for issuance of building permits", in accordance with By-law 2682 (2005).	
May 29, 2015	Title for the full 8.87 acres of Mamas land is transferred to Fonthill Gardens from Denise Mamas, for consideration of \$1,789,555	
June 1, 2015	The Town enacts a new Parkland Dedication By-law 3621 (2015)	
June 4, 2015	The Purchase Option and Cost Sharing Agreement dated March 31, 2014 is amended	
September 8, 2015	Town Council signs a Parkland Dedication Agreement with Fonthill Gardens. Fonthill Gardens to grant 3.268 acres of parkland to the Town. Terms consistent with the February 25, 2015 letter to David Allen. 1.729 acres of the parkland are (formerly) Mamas land.	
November 3, 2015	Effective date of the MHRE Appraisal. The appraisal concludes on a midpoint unit rate of \$60,000 per lot and a unit rate per acre of \$1,141,025. Appraisal is based on the assumption that the land is developed and read for issuance of building permits. This is consistent with the Parkland Dedication By-law.	
2015		
January 11, 2016	Town Council signs a Roadway Agreement with Fonthill Gardens. Fonthill Gardens to grant road at a width that exceeds the municipal requirement of 22 metres. The Town will pay (via credits) \$300,000 per acre for excess road dedication. A portion of which is (formerly) Mamas land.	
March 11, 2016	Town Treasurer engages Ridley & Associates Appraisal Services Limited to complete a peer review of the November 3, 2015 MHRE Appraisal of the Mamas land. It suggests that a midpoint unit rate of \$54,000 per lot or \$1,024,615 per acre may be more appropriate.	
March 21, 2016	Council approves a negotiated unit rate per lot of \$57,000, and a unit rate per acre of \$1,118,582.28. Town to proceed with the acquisition of parkland in exchange for municipal credits.	
August 22, 2016	The Town enters into a Subdivision Agreement with River Realty	
	The Town Treasurer recommends in a written report to Council to approve the payout of the outstanding credits in cash advising of the administrative burden and negative public perception of the use of credits. Council instructs Town Staff to negotiate a discount on outstanding Municipal Credits.	
September 12, 2016	Title for the Excess Parkland Dedication and Excess Roadway Dedication lands are registered to the Town	
September 19, 2016	The Town enacts By-law 3785 (2016) to authorize the execution of a subdivision agreement with Fonthill Gardens	
	Council approves payout of the balance of outstanding Municipal Credits, financed internally by the Town.	
September 20, 2016	The Town issues payment to Fonthill Gardens for the outstanding balance of Municipal Credits by Electronic Funds Transfer in the amount of \$3,027,618.	



Schedule 2 – Questions from the Public

Town of Pelham		Schedule 2	
Questions Received by KPMG from General Public			
October and November 2017			
Question Number	Question	Report Reference	Notes
1	What was the town's full operating budget for 2015?	8.2.1	
2	What was the town's full operating budget for 2016?	8.2.1	
3	What is the town's full operating budget for 2017?	8.2.1	
4	What was the total town debt for 2015?	8.2.1	
4.1	How much was development charge debt?		
4.2	How much was operating debt?		
4.3	How much debt was on the line of credit?		
4.4	How much other debt?		
5	What was the total town debt for 2016?	8.2.1	
5.1	How much was development charge debt?		
5.2	How much was operating debt?		
5.3	How much debt was on the line of credit?		
5.4	How much other debt?		
6	What was the total town debt for 2017?	8.2.1	
7	How much was development charge debt?	8.2.1	
8	How much was operating debt?	8.2.1	
9	How much debt was on the line of credit?	8.2.1	
10	How much other debt?	8.2.1	
11	If this audit is supposed to demonstrate transparency regarding the spending of our tax dollars, how is this achieved when in their usual fashion they restrict the information and even the questions allowed to be asked?	3, 8.2.2, 9	
12	Did the Town use the "excess parkland dedication by-law" appropriately?	8.1.3	
12.1	Why was it necessary to change the by-law prior to executing the agreement?		
12.2	What changed?		
13	Did the Allen Group (Fonthill Gardens) own the property at the time the agreement was executed?	8.1.5	
14	When did the Allen Group assume title of the property referenced in agreement?	8.1.5	
15	Who completed the appraisal?	8.1.4	
16	Who retained the appraiser?	8.1.4	
17	Who arranged for the peer review?	8.1.4	

Questions Received by KPMG from General Public

October and November 2017

Question Number	Question	Report Reference	Notes
18	Did the Town obtain a separate appraisal of its own?	8.1.4	
19	When did the Town assume title to the land?	8.1.5	
20	Is the appraised land actually being used as a park?	8.2.3	
21	Is the agreement a front-end agreement or not?	8.1.10	
22	How much of the "municipal credits" were used by the Allen Group and those to whom the Allen Group sold them?	8.1.7	
22.1	For what purposes?		
22.2	By whom? A full accounting is required for each credit and where it was applied.		
23	If credits were used to offset development charges, the Town is required to put an equivalent amount in their development charges reserves—did this occur?	8.1.7	
24	Where did the cash come from to purchase the outstanding "municipal credits" once the Town decided to end the scheme?	8.1.8	
25	Was the Town of Pelham borrowing from its Development Charge Funds and/or restricted reserves at the end of 2015?	8.2.4	
25.1	Did it declare this borrowing on its Financial Information Report (FIR) submitted to the province, a document essential to determining a municipality's Annual Repayment Limit?		
25.2	How much interest is the Town charging itself for borrowing against its own reserves?		
26	In the addendum that the Town provided to its initial 330-page response to the Region's Audit Committee, the Mayor said that the Municipal Credits liability was changed to an asset and the amount was now an Accounts Receivable. Who is it receivable from? When?	8.1.9	
27	Did the Town of Pelham violate the provincial Development Charges Act by creating a front-end agreement without following the process prescribed under Section 44, or any other section of the Act?	8.1.10	
28	Did the Town of Pelham misstate their 2016 financials by including a receivable for monies not actually owed—i.e., did it pull future revenue into 2016 that properly belonged to 2017 or beyond in order to appear profitable, and to what end would this false appearance of profitability serve?	8.1.9	
29	The Mayor has stated on his blog that the Town decided to pay the Allen Group a 20% premium over the price of the appraisal to account for market increases. Does this violate the current Excess Parkland Dedication by-law regarding determining the value of the land?	8.2.5	
29.1	Was it an arbitrary number?		
29.2	If not, how was this figure determined?		
29.3	Was there a further appraisal?		
29.4	Is this added premium a violation of the Municipal Act regarding prohibitions on providing bonuses to developers?		
30	The Mayor has stated that the value of the credits would increase over time. Is this allowed under a front-end agreement?	8.1.10	

Town of Pelham

Schedule 2

Questions Received by KPMG from General Public

October and November 2017

Question Number	Question	Report Reference	Notes
30.1	If it is not a front-end agreement, can the Town of Pelham consider future development charges to be collected as a current Receivable?		
31	If the Town purchased excess parkland, why does it not appear in the tangible capital assets table in Schedules 2 or 3 of its audited financial statements, which are provided annually?	8.1.9	
32	What was the \$4.5 million in contributed capital assets received in 2016?	8.1.9	
32.1	From whom?		
32.2	For what infrastructure?		
33	The Town's own reports consistently refer to the Town as a "developer." In what way is the Town a developer?	8.1	
33.1	Is the Town a partner in Fonthill Gardens?		
33.2	Where and what is the Town of Pelham developing?		
34	What is the current total of all extras to the new community center building contract	8.2.21	
35	How much money has been identified as payable to Ball Construction under the 60 /40 Bonus clause of their contract and identify each item of the savings with each bonus?	8.2.12	
36	What is the TOTAL cost approved to be spent on the new community center. Confirm what that total cost includes. i.e.: Architect & designer fees, town of Pelham staff time, advertising and promotions, public information literature, special consultants and speakers, total paid to Ball construction for ALL services pre & post building. All fees paid to Petroff Architects, pre and post Build.	8.2.21	
37	Provide a detailed report on who initiated and approved the addition of 9000 sq ft to the new community center?		A
37.1	What primary program does that space provide for?		
37.2	What was the total cost of adding the 9000 sq ft.		
38	Exactly how much is the contract fee for the company hired to obtain the 3 million in corporate donations?	8.2.27	
38.1	How much money is in the bank from these donations right now?		A
38.2	How much more is pledged and when will that money be in the town bank account?		A
39	How much money / fees has been paid to Mr Stephen Kaiser or any of his companies by the Town for any service rendered since 2014?	8.2.26	
40	How much money / fees has been paid to Mr David Allen / the Allen Group since 2014?	8.2.25	
41	The Town used funds from the parkland reserve to pay down principal and interest payments on the 32 acres purchased years ago at the corner of Rice Road and Highway 20. This was considered permissible as the Town had intended to use the whole of the 32 acres for park purposes. Now the Town has reduced the recreational use of that 32 acres to approximately 10 acres and intends to sell the balance to offset the cost of the community centre. I would like to know if the reserve has been paid back in recognition of the fact that less than one-third of the original parcel is being used for 'parkland'.	8.2.6	
42	Who are the partners in Fonthill Gardens and exactly what lands do they have any control over?	8.1	
43	Is the town of Pelham in partnership in any form with Mr. David Allen?	8.1	
44	Does Mr Allen / Fonthill Gardens have any current or pending projects with the town in the east Fonthill development, or own any of the lands?	8.2.7	

Questions Received by KPMG from General Public

October and November 2017

Question Number	Question	Report Reference	Notes
45	Provide all purchase orders and / or contracts between the Town and Ball Construction, unredacted. Include all amendments, appendixes, schedules, costs and charges associated with those documents. Specifically there are contracts for preconstruction services issued sometime in 2015 then again for the construction management services of the new community center in 2016.		A
46	Provide a midterm financial report on the new community center to summarize to date the cost of the Community center to date. Include all costs associated with the community center development, design, construction. The report should also identify all "Approved" change orders to date, all contract amendments to date, all bonuses identified to date as set out in the 60/40 bonus clause of the contract. Include a summary of costs related to the added 9000 sq ft the town identified in November of 2016. This 9000 sq ft should have a stand alone report on who initiated the change and why. This should include all town staff time, all advertising, printing, media releases, consultants, site servicing to provide an "ALL IN" cost report.	8.2.21	
47	On the limited terms of reference – 3.3 Parkland Over Dedication This is a tiny piece of a much larger issue If this scheme as it was referred to was such a great thing, then why when it was publicly uncovered did the Town immediately cease doing it ?	8.1.8	
47.1	It was described to the residents as a clever innovative approach that provided financial gain for the taxpayer. Why would they cease what was so good for the taxpayer?		
47.2	Why did the development community also believe it was improper?		
48	Senior staff turnover The Town has experienced an unprecedented turnover of senior staff and always their leaving the Town centered on the east Fonthill dealings by the Mayor and CAO. We say that because we know for certain that the original senior planner and interim CAO filed a FOI complaint specifically citing the lack of transparency and accountability of the Mayors & CAO with regard to the east Fonthill land dealings. Others filed suit when they could no longer agree with the Mayor and CAO's practices. The employees where all put under duress signing confidentiality agreements or lose a significant release incentive	3, 8.2.8, Appendix A	
49	Ms. Grogan, as a municipal taxpayer who will ultimately be contributing to the funding of this audit, I agree with Councillor Marvin Junkin's opinion that the motion as passed by Pelham Town Council "is too restrictive, and it is incomplete". In fact, given that all estimates for the cost of this audit are in excess of \$10,000, it has already been pointed out in a letter to the local newspaper that Council erred by awarding KPMG the forensic audit contract without first tendering it. Be that as it may, I believe a more appropriate scope and related questions for this forensic audit would be those published by The Voice of Pelham newspaper on Page 5 of the October 4, 2017 issue, re-produced below:	8.1, 8.2.9	
50	The audit should examine the land for municipal credits deal from inception to buy-back of credits by the Town, including and specifically the journal entries to account for the land. There needs to be produced and examined a complete timeline of transactions and events.	8.1.1-8.1.10, Schedule 1	
51	Did the Town use the "excess parkland dedication by-law" appropriately?	8.1.3	
51.1	Why was it necessary to change the by-law prior to executing the agreement? What changed?		
52	Did the Allen Group (Fonthill Gardens) own the property at the time the agreement was executed?	8.1.5	
53	When did the Allen Group assume title of the property referenced in agreement?	8.1.5	
54	Who completed the appraisal?	8.1.4	
54.1	Who retained the appraiser?		
54.2	Who arranged for the peer review?		
54.3	Did the Town obtain a separate appraisal of its own?		
55	When did the Town assume title to the land?	8.1.5	

Town of Pelham		Schedule 2	
Questions Received by KPMG from General Public			
October and November 2017			
Question Number	Question	Report Reference	Notes
56	Is the appraised land actually being used as a park?	8.2.3	
57	Is the agreement a front-end agreement or not?	8.1.10	
58	How much of the "municipal credits" were used by the Allen Group and those to whom the Allen Group sold them?	8.1.7	
58.1	For what purposes?		
58.2	By whom? A full accounting is required for each credit and where it was applied.		
58.3	If credits were used to offset development charges, the Town is required to put an equivalent amount in their development charges reserves—did this occur?		
59	Where did the cash come from to purchase the outstanding "municipal credits" once the Town decided to end the scheme?	8.1.8	
60	Was the Town of Pelham borrowing from its Development Charge Funds and/or restricted reserves at the end of 2015?	8.2.4	
60.1	Did it declare this borrowing on its Financial Information Report (FIR) submitted to the province, a document essential to determining a municipality's Annual Repayment Limit?		
60.2	How much interest is the Town charging itself for borrowing against its own reserves?		
61	In the addendum that the Town provided to its initial 330-page response to the Region's Audit Committee, the Mayor said that the Municipal Credits liability was changed to an asset and the amount was now an Accounts Receivable. Who is it receivable from? When?	8.1.9	
62	Did the Town of Pelham violate the provincial Development Charges Act by creating a front-end agreement without following the process prescribed under Section 44, or any other section of the Act?	8.1.10	
63	Did the Town of Pelham misstate their 2016 financials by including a receivable for monies not actually owed—i.e., and	8.1.9	
63.1	Did it pull future revenue into 2016 that properly belonged to 2017 or beyond in order to appear profitable?		
63.2	To what end would this false appearance of profitability serve?		
64	The Mayor has stated on his blog that the Town decided to pay the Allen Group a 20% premium over the price of the appraisal to account for market increases. Does this violate the current Excess Parkland Dedication by-law regarding determining the value of the land?	8.2.5	
64.1	Was it an arbitrary number? If not, how was this figure determined?		
64.2	Was there a further appraisal?		
64.3	Is this added premium a violation of the Municipal Act regarding prohibitions on providing bonuses to developers?		
65	The Mayor has stated that the value of the credits would increase over time. Is this allowed under a front-end agreement?	8.1.10	
65.1	If it is not a front-end agreement, can the Town of Pelham consider future development charges to be collected as a current Receivable?		
66	If the Town purchased excess parkland, why does it not appear in the tangible capital assets table in Schedules 2 or 3 of its audited financial statements, which are provided annually?	8.1.9	
67	What was the \$4.5 million in contributed capital assets received in 2016?	8.1.9	
67.1	From whom?		
67.2	For what infrastructure?		
68	The Town's own reports consistently refer to the Town as a "developer." In what way is the Town a developer?	8.1	

Town of Pelham		Schedule 2	
Questions Received by KPMG from General Public			
October and November 2017			
Question Number	Question	Report Reference	Notes
68.1	Is the Town a partner in Fonthill Gardens?		
68.2	Where and what is the Town of Pelham developing?		
69	1. Did the Mayor, Council, or the Town commit fraud with respect to these land transactions?	8.2.11	
70	2. Did the Mayor, Council, or the Town knowingly negotiate a bad deal for Pelham residents with respect to these land transactions?	8.1.6	
71	3. Did the Mayor, Council, or the Town knowingly break any laws with respect to these land transactions.	8.2.11	
72	4. Why is Mr. Hummel, a non-resident of Pelham, such an interested third-party in these land transactions? Is there any business relationship, conflict of interest, or business activity between Mr. Hummel and any of the Mayor, Council or the Town that provides context for Mr. Hummel's interest in this matter and his complaint against the Town?	8.2.13	
73	The audit undertaken by KPMG Canada cannot be considered an independent, third party audit since the Mayor and Town Council are the ones who chose the auditing company.	3, 8.2.2, 9	
74	The Town provides "all" the documents (but will it provide the contentious ones?) and chooses and/or guides the terms of reference for the audit.	3, Appendix A	
75	This audit should involve interviews with previous employees, who have been fired that have NOT signed a NDA.	3, 8.2.8, Appendix A	
76	Conduct a review of the 'change log" from the Community Centre construction project currently underway, a document that is intended to enumerate all alterations to a building plan after official approval. There is \$2.5 million dollars that seems to have vanished from the project with little explanation.		A
77	When the parties in question/under investigation (Mayor and Town of Pelham) get to select the scope of the audit, isn't that like the fox guarding the hen house?	3, 8.2.2, 9	
78	Is the agreement a front-end agreement?	8.1.10	
79	Did the town violate the provincial Development Charges Act by creating a front-end agreement without following the process prescribed under Section 44 or any other section of the Act?	8.1.10	
80	Did the Town of Pelham misstate their 2016 financials by including a receivable for monies not actually owed? i.e.	8.1.9	
80.1	Did it pull future revenue into 2106 that properly belonged to 2017 or beyond?		
80.2	To what end would this false appearance of profitability serve?		
81	The mayor has stated that the value of the credits would increase over time. Is this allowed under a front-end agreement?	8.1.10	
81.1	If not, can the Town of Pelham consider future development charges to be collected as a current Receivable.		
82	Can you please confirm that you will be addressing conformity of the municipality's actions with/to the Municipal Act and the Development Charges Act.	8.1.10	
83	Where did the Town get the cash to purchase the outstanding municipal credits when they decided to end the scheme?	8.1.8	
84	Was the Town borrowing from its Development Charge Fund and/or restricted reserves at the end of 2015?	8.2.4	
84.1	If so, did they declare this borrowing on its Financial Information Report (FIR) submitted to the province?		
85	How much interest is the town charging itself for borrowing against its own reserves?	8.2.4	

Town of Pelham		Schedule 2	
Questions Received by KPMG from General Public			
October and November 2017			
Question Number	Question	Report Reference	Notes
86	Did the Allen Group (Fonthill Gardens) own the property at the time the agreement was executed?	8.1.5	
87	When did the Allen Group assume title of the property referenced in the agreement?	8.1.5	
88	When did the Town assume title to the land?	8.1.5	
89	If the Town purchased excess parkland, why does it not appear in the tangible capital assets table in Schedule 2 or 3 of its audited financial statements, which are provided annually?	8.1.9	
90	Will your audit address compliance with the requirements of both the Municipal Act and the Development Charges Act, going beyond the simple exercise of determining that the Town reported the transactions?	8.1.10	
91	Is there any by-law in Pelham or in the Act that allows for land purchases to be paid for with development credits?	8.1.10	
91.1	Is this payment scheme in compliance with the Development Charges Act sections 37 and 38.		
91.2	Section 38 of the Act says 'work done' can be paid in credits and Pelham bylaw 3527 (2014) states 'services in lieu' can be paid in credits but can land?		
92	The parties involved in the credit transaction include Corporation of the Town of Pelham and Fonthill Gardens Inc and Fonthill Gardens (2015) Inc as stated in Town of Pelham by-law 3650 created to execute the Excess Parkland dedication. Which entity received the development credits or if both how many did each receive.	8.1.6 - 8.1.8	
93	Did the agreement between the Town and Fonthill Gardens Inc and Fonthill Gardens (2015) Inc contain a clause that the recipient of the credits could not sell them?	8.1.1, 8.1.2, 8.1.10	
93.1	Did the Municipality sign off on Fonthill Gardens selling credits to other developers?		
93.2	Did the Municipality agree to allow Fonthill Gardens to sell their credits to other developers at a 5% discount?		
93.3	Does the sale of credits by Fonthill Gardens contravene section 38 of the Act?		
94	In the addendum to March 29, 2017 response to Councillor Barricks Motion there is an accounting of the credits issued to Fonthill Gardens, credits used, balance negotiated payout and balance paid in full.	8.1.7	
94.1	Nowhere is there an accounting of the credits Fonthill Gardens sold to other developers?		
94.2	What was the value of the credits sold to other developers and how did the Municipality account for these sold credits in their accounts?		
95	What are/were the total development charges payable by Pelham Gardens to the municipality in respect of the development of the Market Place.	Table 5	
96	Did the value of the development credits given to Fonthill Gardens exceed the development charges payable by Fonthill Gardens to the Municipality.	8.1.7	
96.1	If no then why did Fonthill Gardens sell off credits?		
96.2	If yes does this contravene section 38 of the Act?		
97	How much parkland was or is to be dedicated as a result of the development of the Market Place ie 2% or cash in lieu?	8.2.14	

Town of Pelham		Schedule 2	
Questions Received by KPMG from General Public			
October and November 2017			
Question Number	Question	Report Reference	Notes
97.1	Was this dedicated parkland or cash in lieu subtracted from the excess parkland required by the Municipality?		
98	Value for money audit – please assess the efficiency, effectiveness and economy of the Town of Pelham’s use of our tax money to purchase the 3.3 acres of parkland	8.1.6	
99	How much of the municipal credits were used by the Allen Group?	8.1.7	
99.1	who did the Allen Group sell these credits to?	8.1.7	
99.2	how many were sold?	8.1.7	
99.3	how were these credits used?	8.1.7	
99.4	who used them?	8.1.7	
100	We would like a detailed interim reconciliation of all financials relating to the new community center development and building contracts. Include all change orders, descriptions, itemized costs. Include all 60/40 bonus clause items identified to date, their costs and where the savings are awarded. These will be heavily scrutinized since Ball Construction was engaged 1 year before the project was officially approved by Council to proceed. They did receive 45 K to carry out value engineering and costs saving whilst preparing the project budget. Any savings after April 25, 2016 will be questioned. Cost saving by trade or supplier alternates will not be considered for bonus clause payments to Ball.		A
101	“To make the audit completely independent, Pelham Town Council has retained KPMG Canada to undertake an independent, third-party audit of all transactions and documents related to the parkland over-dedication and the development charge credit agreement.” Please advise of the specific direction given to KPMG for the completion of the audit. Are there Terms of Reference?	1, 3, Appendix A	
101.1	Will the audit detail what “all transactions and documents” consists of?		
102	<p>Parkland Over-Dedication</p> <p>Policy B1.7.9.4.3 of the Official Plan identifies the “Parkland Acquisition Tools” for East Fonthill as:</p> <p>a) In addition to the policies of Section D5.4 of this Official Plan, the public parkland system as conceptually identified on the schedules to the East Fonthill Secondary Plan Area will be acquired by the following means:</p> <p>i) The land acquisition powers authorized by public statutes, including the Planning Act, the Official Plan and this Secondary Plan;</p> <p>ii) Funds allocated in the Town’s budget, dedicated reserves in the Parkland Acquisition Account for the East Fonthill Secondary Plan Area, or joint acquisition programs;</p> <p>iii) Voluntary conveyance, donations, gifts, bequests from individuals or corporations; and/or,</p> <p>iv) Funds allocated by any authority having jurisdiction.</p> <p>The tools identified are limited, which tool was used in the acquisition of the lands?</p> <p>Understanding that there was no planning application, I assume that subsection ii) was used.</p>	8.2.15	
103	Did the Town have \$3.3 million in the Parkland Acquisition Account for the East Fonthill Secondary Plan Area? Or,	8.1.6, 8.1.8	
103.1	was the money budgeted?		
104	Will the audit address the rationale for the varying approaches in the appraisal of land accounting for the use of “extreme assumptions” in accordance with the Appraisal Institute of Canada’s “Canadian Uniform Standards of Professional Appraisal Practice”?	8.1.1, 8.1.3, 8.1.4	
105	Does the Town comply with Sections 42(17) to (20), inclusive, of the Planning Act?	8.2.16	
106	The Town’s Development Charge By-law allows the use of credits in limited circumstances, including Services In Lieu .	8.1.10	

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Questions Received by KPMG from General Public			
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Question Number	Question	Report Reference	Notes
106.1	What service was provided?		
106.2	What was the amount of the credit provided?		
106.3	How was that valuation completed? If by appraisal, was the same method followed for the road as for the parkland?		
106.4	Did the credit exceed the total development charge payable?		
106.5	Where was the credit charged to?		
107	I think it would be appropriate and prudent for KPMG to provide to the public the terms of reference and the value of this contract to KPMG from the Town of Pelham.	1, 3, 8.2.17, Appendix A	
108	Who completed the appraisal?	8.1.4	
109	Who retained the appraisal?	8.1.4	
110	Who arranged for the peer review?	8.1.4	
111	Did the town obtain a separate appraisal of its own?	8.1.4	
112	Is the appraised land actually being used as a park?	8.2.3	
113	The mayor has stated that the town decided to pay the Allen Group a 20% premium over the price of the appraisal to account for market increases. 1. Does this violate the current Excess Parkland Dedication by-law regarding determining the value of land?	8.2.5	
113.1	Was this (20%) an arbitrary number? If not, how was the figure determined?		
113.2	Was there a further appraisal?		
114	Is this added premium a violation of the Municipal Act regarding prohibitions on providing bonuses to developers?		
115	How much of the municipal credits were used by the Allen Group and those to whom the Allen Group sold them?	8.1.7	
116	How were the municipal credits used and by whom?	8.1.7	
117	If credits were used to offset development charges, did the Town put an equivalent amount in their development charges reserve?	8.1.7	
118	What will be the impact of the Town's debt load on homeowners' house taxes, and for what period of time?		A
118.1	What kinds of measures might have to be taken as a consequence of our debt load?		
119	Is selling the Haist Street parkland really necessary?	8.2.18	
120	Has the Town government adhered to acceptable accounting and debt acquisition procedures?	8.1.9, 8.1.0	
121	Is it possible to minimize debt by spreading the load over more years, esp if it means NOT selling the Haist property?	8.2.19	

Town of Pelham		Schedule 2	
Questions Received by KPMG from General Public			
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Question Number	Question	Report Reference	Notes
122	Did anyone connected, in any way, with the mayor or council gain financially from the East Fonthill deal?	8.2.20	
123	Why was such a high price paid for the land and where did the vanishing \$2.5 million actually go?	8.1.4	
124	Is it possible to have input from fired Town employees?	3, 8.2.8, Appendix A	
125	Would you welcome a civilian oversight panel? We know of the international credibility of your company, but others may not. This would put to rest once and for all any concerns.	3, 8.2.2, 9	
126	What is the total debt owing? The mayor's recent article seemed to minimize this issue, but to us financial obligations of the Town is debt regardless of the source.	8.2.1	
127	We have concerns that the contingency fund for the Community Centre has dropped from 1,706,099 as reported to Infrastructure Ontario in Jan 2017 to 99,190 reported to the same organization August 31 2017 with the cost-to-date of the project as of Aug 31 2017 at only 37%.	8.2.22	
128	What was the \$4.5 million in contributed capital assets received in 2016?	8.1.9	
128.1	From whom?		
128.2	For what infrastructure?		
129	In the addendum that the town provided to its initial 330 page response to the Region's Audit committee, the mayor said that the Municipal Credits liability was changed to an asset and the amount was now an Accounts Receivable. Who it is receivable to? When?	8.1.9	
130	What was the \$4.5 million in contributed capital assets received in 2016?	8.1.9	
130.1	From whom and		
130.2	for what infrastructure?		
131	The Town of Pelham's own reports consistently refer to the town as a 'developer'. In what way is the Town a developer?	8.1	
131.1	Is the town a partner in Fonthill Gardens?		
131.2	Where is the town developing?		
131.3	What is the town developing?		
132	how many people responded to this electronic or written request for audit questions.	8.2	
132.1	Also how many requests were from Pelham residents?		
132.2	how many were from Pelham town staff, mayor, counsellors, etc?		
132.3	How many were from outside of Pelham?		
133	KPMG should excuse itself and refuse to conduct the "audit" that the mayor and his council are promoting. KPMG is not viewed by the residents of Pelham and being fair and unbiased. Rather hiring the existing audit firm is viewed as an in-side job. The residents of Pelham are looking for an objective review of the town's finances and KPMG cannot provide that. Any report that favours the mayor and his council that is authored by KPMG will be viewed as tainted and have no value by the residents of Pelham. The current group of civic leaders have lost the trust of the town's residents. If the mayor of Pelham and his council cannot do the right thing, then KPMG should and disqualify itself from the audit.	3, 8.2.2, 9	

Town of Pelham

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Question Number	Question	Report Reference	Notes
134	With regards to municipal credits, the town refers to itself as a developer. With regard to land it owns and hopes to sell is the Town considered a developer? In what way is the Town a developer?	8.1	
134.1	Is the Town a partner in the Fonthill Gardens?		
134.2	Where is the Town developing?		
134.3	What is the Town developing?		
135	I do not know the limits of your audit, but you should be looking at whether it was even legal to use parkland dedication for the purchased land, if that's what they did.	8.1.10	
136	I am concerned that the financial ground work to the community center and other large expenditures started before the public announcement of such plans.	8.2.23	
137	There are also questions of all the cost of severance packages (no names, just a list of amounts per year), the final cost of the Maple Acre Library and amounts paid to consultants each year that should be listed. And what you normally look at in a forensic audit.		A
138	The east fonthill development audit should not be controlled by the mayor or any city councillor.	3, 8.2.2, 9	
139	Further from the latest developments happening, in our community and one councillor resigning the only way to clear the air is to get a full police investigation. If nothing is found wrong then everyone will be exonerated, and if the law was broken those responsible should be held accountable.	8.2.11	
140	What is the total financial cost of this audit to the Town of Pelham?	8.2.17	
141	How many audits have you completed or in the process of completing for the T.O.P. and the dates they were requested and the type of audit and costs of each?	8.2.24	
142	Did you respond to a "Tender" or Request For Proposal or any other form of bid to the T.O.P. to secure this audit request and any other audit requests and their dates requested? What other bids were submitted for these audits	8.2.9	
143	Did the T.O.P. pay for the extension or any part of the extension of Cream Street, south of Foss road a few years ago?		A
144	The total cost of the new skate park in Fonthill		A
145	The cost of the expanded Town Hall		A
146	Two new Pelham Fire Halls, the cost of each one		A
147	Refurbished village centers complete cost of each one. A. Fonthill, B. Ridgeville C. Fenwick Did the same company or a division of the same company or a ownership related company do more than one of the projects? Was each project tendered and what were the bids on each project?		A
148	What was the cost of the "Ask the Experts" April meeting that only gave 7 days notice and only advertised in the Pelham News?		A
149	What has the cost to date been for the group contracted to provide a housing construction plan of the Haist Street (Fonthill) arena site?		A
150	I would like to see a general full review of the town's spending including the Community Centre and the library and the bank accounts that were recently declared by a member of Pelham Town Council to be empty.		A
151	I am very curious about the deals with developers that may have transpired during the planning of the community centre.		A

Town of Pelham		Schedule 2	
Questions Received by KPMG from General Public			
October and November 2017			
Question Number	Question	Report Reference	Notes
152	I am curious about the appeal of Pelham to those individuals building the legal Marijuana grow-ops in Pelham recently at a time when the town appears to be desperate to fund the community centre.		A
153	What is the total financial cost of Lawyers fees to the T. O. P. since 2008 ?		A
154	What is the total cost of litigation for employees or management since 2008		A
155	What is the cost of litigation separated for T.O.P. due to each lawsuit from business, home owner or any other entity or Ministry of Government, etc since 2008?		A
156	Without names, what is the financial cost of each employee severance package in which year?		A
157	Without names, what is the financial cost of each lawsuit listing both lawyer fees and settlement to the plaintiff separately, the Town of Pelham has incurred since 2008		A
158	How many lawsuits have been launched against the T.O.P. since 2008?		A
159	Is the lawyer requirement by the T.O.P. fulfilled by a response to a tender? And if so does it change year by year or get retendered?		A
160	Regarding the second ice pad for the Community Centre: - the studies performed by third parties to support the double ice pad arena is at the center of why we needed the extra land in the first place. - Did the town exceed its mandate to use our tax dollars to provide for our specific needs or are we running a commercial business that is in competition with other towns and private rinks?	8.2.28	

Note A

This question is outside of the scope of our investigation.

A Scope of Review

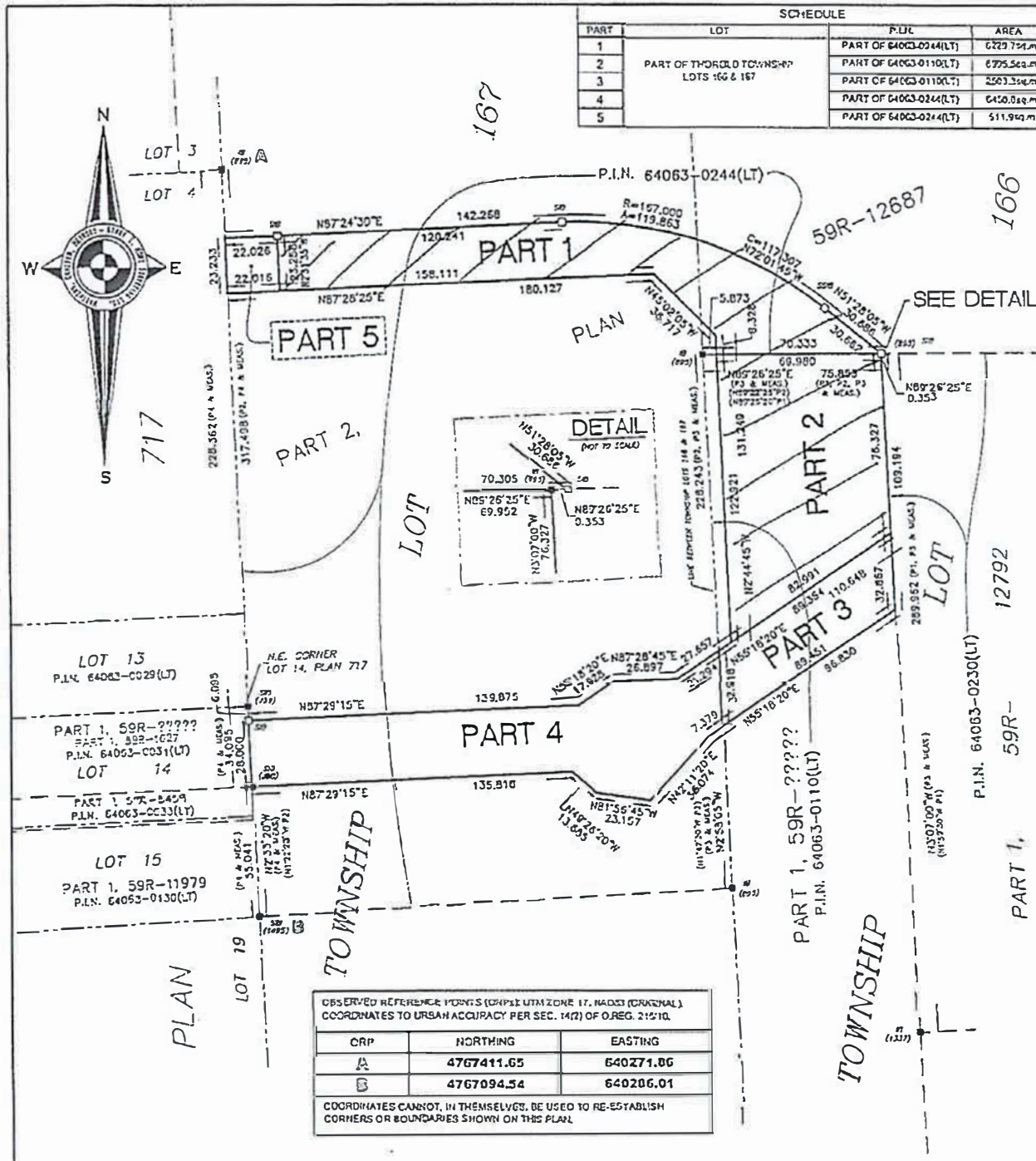
Our comments, calculations and analysis as contained in this report are based on our review of the following information as well as other information referenced throughout:

- Amendment to the Development Charges Act, 1997 and the Planning Act, Assented to December 3, 2015
- Capital Budget of the Town for the years ended December 31, 2015 – December 31, 2017
- Operating Budget of the Town for the years ended December 31, 2015 – December 31, 2017
- Copy of GL detail of the Town for the year ended December 31, 2016 re payments to Fonthill Gardens and Kaiser and Associates Inc.
- Copies of email correspondence of the Treasurer as provided by Teresa Quinlin, from the period of July 18, 2016 to May 24, 2017
- Copies of email correspondence of Darren Ottaway and David Allen re approval of MRHE as appraiser and area and value calculations for the excess dedications
- Copy of Addendum to March 29, 2017 Response to Councillor Barrick's Motion
- Copy of Amendment to Purchase Option and Cost Sharing Agreement between the Town and Fonthill Gardens dated June 4, 2015
- Copy of Appraisal of: 7.8 Acres of Serviced Land Off of Regional Road 20 Fonthill, Ontario by MacKenzie Ray Heron & Edwardh with an effective date of November 3, 2015
- Copy of 'Block Map' of East Fonthill as provided by Callum Shedden, Daniel & Partners LLP
- Copy of Council Report-In-Camera of March 26, 2016 re Conveyance of Lands from Fonthill Gardens
- Copy of Council Report-In-Camera of August 22, 2016 re Parkland Over Dedication from Fonthill Gardens
- Copy of East Fonthill Commercial Area Subdivision Agreement dated September 19, 2016
- Copy of Executive Summary of DRAFT re Appraisal Report of 151 Port Robinson Road Pelham (Fonthill), Ontario by Ridley & Associates Appraisal Services Limited
- Copy of letter from David Allen to Darren Ottaway dated March 26, 2016 re conveyance of park and road dedications to Town and Fonthill Gardens' calculation of Municipal Credit balance
- Copy of Town By-law 2682 (2005)
- Copy of Town By-law 3259 (2012)
- Copy of Town By-law 3479 (2014)
- Copy of Town By-law 3621 (2005)
- Copy of Town By-law 3650 (2015)
- Copy of Town By-law 3696 (2016)
- Copy of Town By-law 3785 (2016)

- Copy of Letter from Darren Ottaway to David Allen dated February 25, 2015 re Parkland Dedication in the East Fonthill Secondary Area
- Copy of Memorandum from the Planning Partnership sent to Darren Ottaway dated January 19, 2015 re East Fonthill Mixed-Use Centre Park Development
- Copy of minutes of Council Meeting March 21, 2016 re resolution to approve appraised value of Mamas Land
- Copy of minutes of C-33/2015 – Regular Meeting of Council of September 8, 2015
- Copy of minutes of C-07/2016 – Regular Meeting of Council February 16, 2016
- Copy of minutes of IC-18-2016 – In-Camera meeting of Town Council September 19, 2016 re 239(2)(c) – proposed or pending acquisition or disposition of land
- Copy of Ontario Municipal Board decision re case PL121306 dated July 18, 2014
- Copy of Parcel Register 64063-0244 (LT)
- Copy of Parcel Register 64063-0248 (LT)
- Copy of Parkland Dedication Agreement between the Town and Fonthill Gardens dated September 8, 2015
- Copy of peer review re Appraisal Report of 7.8 Acres – Rice Road & Highway 20 Pelham (Fonthill), Ontario by Ridley & Associates Appraisal Services Limited dated March 11, 2016
- Copy of Plan 59R-15473 (Plan of survey of Part of Thorold Township Lots 166 & 167)
- Copy of Purchase Option and Cost Sharing Agreement between the Town and Fonthill Gardens dated March 17, 2014
- Copy of River Estates Subdivision Agreement River Realty Development (1976) Inc. (Subdivision File No. 26T29-03014)
- Copy of Trial Balance of the Town for the year ended December 31, 2016
- Development Charges Act, 1997
- East Fonthill Secondary Plan Area Schedule 'A5' – Land Use Plan dated March 11, 2014 from the Town's Official Plan dated March 11, 2014
- Emails submitted by general public directly to Karen Grogan
- Emails submitted by the general public to townofpelhaminfo@kpmg.ca dedicated email address
- Information posted to the Town's website
- The Town's Official Plan dated March 11, 2014
- Land registry documents provided by Callum Shedden, Daniel & Partners LLP re park and road dedications from Fonthill Gardens
- Monthly Project Status Report submitted to: Infrastructure Ontario for month ending January 31, 2017 and August 31, 2017
- Copy of the Arena Facility Provision Strategy for the Town dated January, 2014 as prepared by LeisurePlan International Inc.

- Copy of the Multi-purpose Community Complex Provision Strategy Business Plan, for the Town dated May, 2014 as prepared by LeisurePlan International Inc.
- Copy of the Town of Pelham Arena Facility Provision Strategy 2015 Update dated June, 2015 as prepared by LeisurePlan International Inc.
- Municipal Act, 2001
- Planning Act, 1990

B Schedule “A” of the Parkland Dedication Agreement



SCHEDULE			
PART	LOT	P.L.N.	AREA
1		PART OF 64063-0244(LT)	6229.75sq.m
2	PART OF THOROLD TOWNSHIP LOTS 166 & 167	PART OF 64063-0110(LT)	8795.56sq.m
3		PART OF 64063-0110(LT)	2563.34sq.m
4		PART OF 64063-0244(LT)	6450.81sq.m
5		PART OF 64063-0244(LT)	511.94sq.m

I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT

DATE

Ontario Land Surveyor

PLAN 59R-

RECEIVED AND DEPOSITED

DATE

REPRESENTATIVE FOR LAND REGISTRAR FOR THE LAND TITLES DIVISION OF NIAGARA SOUTH (59)

METRIC NOTE
DISTANCES AND COORDINATES ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

BEARING NOTE
BEARINGS SHOWN HEREON ARE GRID BEARINGS DERIVED FROM OBSERVED REFERENCE POINTS A AND B BY REAL-TIME NETWORK OBSERVATIONS (SOUTH ZONE 16) AND ARE REFERRED TO THE CENTRAL MERIDIAN 81°W OF UTM ZONE 17, NAD83 (ORIGINAL)

DISTANCE NOTE
DISTANCES SHOWN ON THIS PLAN ARE ADJUSTED GROUND-LEVEL DISTANCES AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY A COMBINED SCALE FACTOR OF 0.99981542

LEGEND

SM	SURVEY MONUMENT SLOD	141	142	WITNESS
ST	SURVEY MONUMENT SET	22	23	PLAN 59R-1291
FT	PIEN TIEGE	22	23	PLAN 59R-1297
OC	CUT CROSS	24	25	PLAN 59R-1297
PK	PACKING	24	25	PLAN 59R-1297
SD	STANDARD HOUSING	26	27	G.J. CLARKE, O.L.S.
SD	SHORT STANDARD HOUSING	26	27	D.A. LAPE, O.L.S.
SD	RECNO CHAIN MARK	26	27	D.C. WARR, O.L.S.
CD	CONCRETE MONUMENT	1425		P.C. REITSMA, O.L.S.
CD	CONCRETE PIN & WADZES			

Map 59
Matthews, Cameron, Heywood - Kerry T. Howe Surveying Ltd.
N = North / S = South / E = East / W = West / 1 = Meter / 100 = Centimeter

PLAN OF SURVEY OF

PART OF THOROLD TOWNSHIP LOTS 166 & 167

TOWN OF PELHAM

REGIONAL MUNICIPALITY OF NIAGARA

MATTHEWS, CAMERON, HEYWOOD - KERRY T. HOWE SURVEYING LTD.

0 10 20 30 40 50 60 70 80 90 100 METRES

2015

SURVEYOR'S CERTIFICATE

I CERTIFY THAT:

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEY ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.

2. THE SURVEY WAS COMPLETED ON

PRELIMINARY

DATE

Ontario Land Surveyor

OBSERVED REFERENCE POINTS (ORP) UTM ZONE 17, NAD83 (ORIGINAL) COORDINATES TO URSAH ACCURACY PER SEC. 14(2) OF O.REG. 215/10

ORP	NORTHING	EASTING
A	4767411.65	640271.06
B	4767094.54	640206.01

COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN.

MATTHEWS, CAMERON, HEYWOOD - KERRY T. HOWE SURVEYING LIMITED

A 1999 LIMITED LIABILITY ACT 12, 2000 ONTARIO

1201 STANLEY AVE. SUITE 101, NIAGARA FALLS, ONTARIO L2G 1G2

Telephone: (905) 761-1000 Fax: (905) 761-1001 Email: info@matthews-cameron.com

A.T. CALLED

P.L.N. 15-15-043-00

C By-Law No. 3621 (2015)

THE CORPORATION OF THE
TOWN OF PELHAM

BY-LAW NO. 3621 (2015)

Being a By-law to Enact a New Parkland Dedication By-law and to Repeal By-law No. 2682 (2005).

WHEREAS section 42 of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, provides that as a condition of development or redevelopment of land, the Council of a local municipality may, by by-law applicable to the whole of the municipality or to any defined area or areas thereof, require that land in an amount not exceeding, in the case of land proposed for development or redevelopment for commercial or industrial purposes, two percent (2%) and in all other cases five percent (5%) of the land to be conveyed to the municipality for park or other public recreational purposes.

AND WHEREAS section 51.1 of the *Planning Act*, R.S.O. 1990, Chapter P. 13, as amended, provides that the approval authority may impose as a condition of the approval of a plan of subdivision that land in an amount not exceeding, in the case of a subdivision proposed for commercial and industrial purposes, 2 percent (2%) and in all other cases 5 percent (5%) of the land included in the plan shall be conveyed to the local municipality for park or other public recreational purposes or, if the land is not in a municipality, shall be dedicated for park or other public recreational purposes.

AND WHEREAS section 53 of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, provides that a Council may impose, as a condition of the giving of a provisional consent, that land be conveyed to the municipality for park or other public recreational purposes, such land not to exceed, in the case of land proposed to be severed for Commercial or Industrial purposes 2 percent (2%), and in all other cases 5 percent (5%).

AND WHEREAS in the case of land proposed for development or redevelopment for residential purposes, pursuant to subsection 42(3) of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, a

municipality may require that such land be conveyed at the rate of up to one hectare for each 300 Dwelling Units, provided that the municipality has specific policies dealing with the provision of lands for park or other public recreational purposes, and the use of this alternative requirement is included within its Official Plan.

AND WHEREAS the Council of The Corporation of the Town of Pelham wishes to use the provisions of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, for the purposes of acquiring and providing parkland for the use and enjoyment of the residents of the Town of Pelham.

AND WHEREAS the Council of the Corporation of the Town of Pelham deems it necessary and expedient to establish policies to ensure adequate resources for the recreational and cultural needs of the Town of Pelham that may be attributable to new development.

AND WHEREAS the Official Plan for the Corporation of the Town of Pelham contains approved policies regarding the requirements for the conveyance of land for park or other recreational purposes.

AND WHEREAS the Council of the Corporation of the Town of Pelham desires to repeal and replace By-law No. 2682 (2005).

NOW THEREFORE the Municipal Council of the Town of Pelham hereby enacts as follows:

PURPOSE

The purpose of this By-law is to accomplish the following objectives:

1. Ensure that lands are dedicated for park purposes as a result of the development of land in the Town; and
2. Ensure that when dedication is not required, cash-in-lieu of land for park purposes is paid to the Town as a result of the development of land; and
3. Ensure the provision of guidelines directing Staff in carrying out the provisions of this By-law in a responsible and timely manner.

DEFINITIONS

Building Permit shall mean an application for a building permit issued by the Chief Building Official of the Corporation of the Town of Pelham approving an application for the construction, reconstruction or alteration of any building or structure for which such permit is required pursuant to the provisions of the Building Code Act, S.O. 1992, c.23, as amended, or any successor thereto and the Town's Building By-law

No. 2686 (2005), as amended, being a by-law to implement and enforce the Building Code Act as amended, or any successor thereto.

Chief Building Official shall mean the Chief Building Official as appointed by by-law of the Council of the Corporation of the Town of Pelham.

Consent to Sever Application shall mean an application for consent pursuant to the provisions of Section 53 of the *Planning Act*, or any successor thereto.

Council shall mean the Council of the Corporation of the Town of Pelham.

Development/Redevelopment shall mean the construction, erection or placing of one or more buildings or structures on a lot or the making of an addition or alteration to a building or structure that has the effect of increasing the size or usability thereof.

Director of Community Planning & Development shall mean the Director of Community Planning & Development of the Corporation of the Town of Pelham.

Lot shall mean an existing parcel of land or a parcel of land created by Consent to Sever or registered Plan of Subdivision in accordance with the provisions of the *Planning Act*, or any successor thereto.

Plan of Subdivision Application shall mean an application for a plan of subdivision pursuant to the provisions of Section 51 of the *Planning Act*, or any successor thereto.

Qualified Appraiser shall mean a member of the Appraisal Institute of Canada in good standing.

Site Plan Application shall mean an application for Site Plan Approval pursuant to the provisions of Section 41 of the *Planning Act*, or any successor thereto.

Substantial increase to the size or usability of a Building or Structure shall mean to provide more than the existing number of residential units in the case of any lot used for residential purposes or more than double the gross floor area of any building or structure on the lot to be used for non-residential purposes.

Town means the Corporation of the Town of Pelham.

Zoning By-law Amendment Application shall mean an application to amend Town of Pelham Zoning By-law No. 1136 (1987), as amended, pursuant to the provisions of Section 34 of the *Planning Act*, or any successor thereto.

GENERAL POLICIES

1. The provisions of this By-law are applicable to all land under the jurisdiction of the Corporation of the Town of Pelham.
2. Parkland dedication or cash-in-lieu thereof is required pursuant to the provisions of Section 42 of the *Planning Act*, or any successor thereto, as a condition of development or redevelopment of lands within the Town, in the amount of two per cent (2%) for commercial or industrial and five per cent (5%) in all other cases. Alternatively, for residential development proposals, Council may require land to be conveyed for park or other public recreational purposes at a rate of up to one (1) hectare for each 300 dwelling units proposed. In lieu of the above requirement, Council may require cash-in-lieu of parkland instead, as deemed appropriate.

3. The Town may require the dedication of land for park purposes where the location of the parkland has been determined in accordance with the policies of the Town of Pelham Official Plan. All parkland acquisition in excess of five per cent (5%) or one (1) hectare for each 300 dwelling units shall be at a price negotiated with the Owner and shall be subject to the approval of Council.
4. The Town shall require cash-in-lieu of the dedication of land for park purposes where lands are not required for park purposes.
5. The Town's policies with respect to the requirements for cash-in-lieu of the dedication of land for park purposes are as stated in the Town's Official Plan. The requirements are as set out in this By-law.
6. Where reference is made in this By-law to appraisals, a letter of opinion from a qualified appraiser shall be acceptable.
7. The provisions of this By-law do not apply where owners apply to the Corporation of the Town of Pelham for a building permit relating to development or redevelopment of lands by way of structural improvement, repair, replacement or enlargement of buildings or structures already located on lands if the effect of such structural improvement, repair, replacement or enlargement do not substantially increase the size or usability of one or more buildings on the lands and for the purpose of this By-law, the words "substantially increase the size or usability" shall mean to provide more than the existing number of residential units in the case of residential land use or more than double the gross floor area of any structure on lands to be used for non-residential purposes.

DETAILED POLICIES

The dedication and acquisition of parkland as well as the collection of cash-in-lieu thereof shall be required as follows:

1. Existing Vacant Lots

The Town may at its sole discretion accept the dedication of land for existing vacant lots, but will require cash-in-lieu of parkland when land is not dedicated. Such payment shall be required pursuant to the provisions of Section 42 of the *Planning Act* prior to the issuance of any Building Permit for the vacant lot.

Where lands are vacant agricultural lands designated and/or zoned for agricultural purposes, the appraisal will be based on the first 0.4 hectares (1 acre) of the lands. No cash-in-lieu payment is required on vacant lands for Building Permits for agricultural purposes including barns, silos, greenhouses, storage buildings and accessory equipment, but excluding a building used for residential purposes.

2. Consent to Sever Applications

Concerning lots resulting from applications for Consent to Sever, the Town will not accept land but will require cash-in-lieu of the dedication of land for park purposes. Said payment shall be required pursuant to the provisions of Sections 42 and 53 of the *Planning Act* prior to the issuance of a Building Permit. The Planning Services Department shall advise the Committee of Adjustment upon circulation that the Town requires payment of cash-in-lieu of the dedication of land pursuant to the provisions of Section 42 of the *Planning Act*, upon the issuance of any Building Permit for either the severed or retained parcel whichever, is the vacant lot. Planning Services Staff will further request the Committee of Adjustment to impose the following condition of approval:

That the applicant(s) sign the Town of Pelham's standard "Memorandum of Understanding" explaining that development charges and cash-in-lieu of the dedication of land for park purposes are required prior the issuance of a Building Permit.

The purpose of the "Memorandum of Understanding" is to advise the applicant that cash-in-lieu of the dedication of land is required prior the issuance of a Building Permit and to ensure that if the applicant sells the lot, that the applicant (vendor) informs the purchaser of the requirement to pay cash-in-lieu of the dedication of land prior to the issuance of a Building Permit.

3. Plan of Subdivision Application

During the review of the application for draft plan approval, the Planning Services Department shall review the plan with the policies of the Town of Pelham Official Plan to determine if lands have been identified for parkland acquisition. Where the Town identifies that lands are required for acquisition, the Planning Services Department shall ensure that the following condition of draft plan approval is included in the Recommendation report to the Committee of the Whole or Council:

Pursuant to the provisions of the Planning Act, that the Owner convey Block/Lot ___ to the Town for park purposes.

In some instances, it will be necessary for the applicant to convey lands in excess of the two percent (2%), five percent (5%) or one (1) hectare for each 300 dwelling units requirement where lands have been identified for parkland acquisition. Where lands are in excess of the dedication requirement, the Planning Services Department shall ensure that the following condition of draft plan approval is included in the Recommendation report to the Committee of the Whole or Council:

Pursuant to the provisions of the Planning Act, that the Owner convey Block/Lot __ to the Town for park purposes and that the Town negotiate with the Owner the value of those lands in excess of the required park dedication requirements of the Planning Act.

Where lands have not been identified for acquisition by the Town for park purposes, the Town shall require cash-in-lieu of the dedication. In such circumstances, the Planning Services Department shall ensure that the following condition of draft plan approval is included in the Recommendation report to the Committee of the Whole or Council:

That the Owner agrees in the Agreement to pay cash-in-lieu of land for park purposes for each lot and/or block prior to the issuance of a Building Permit pursuant to Section 42 of the Planning Act, R.S.O. 1990.

4. Site Plan Application

With respect to applications for Site Plan Approval, the Town will require parkland and/or cash-in-lieu of the required dedication of land in accordance with the provisions of Section 42 of the *Planning Act* prior to the issuance of any Building Permit for the development.

The Planning Services Department shall include the following clause in the Site Plan Agreement:

The Owner acknowledges and agrees that neither the Owner, or any person under its authority shall be entitled to the issuance of any Building Permit to construct any building or structure contemplated by this Agreement and that the Town shall be under no obligation to issue a Building Permit on the

Lands until the required cash-in-lieu of land or land for park purposes has been paid or dedicated to the Town.

5. Zoning By-law Amendment Application

With respect to applications for Zoning By-law Amendment, the Town will require cash-in-lieu of the dedication of land in accordance with the provisions of Section 42 of the *Planning Act* prior to the issuance of any Building Permit.

Planning Services Staff will further advise the Committee of the Whole or Council in the Recommendation report to impose the following condition of approval:

That the applicant(s) sign the Town of Pelham's standard "Memorandum of Understanding" which explains that the development charges and cash-in-lieu of the dedication of land for park purposes are required prior the issuance of a Building Permit.

The purpose of the "Memorandum of Understanding" is to advise the applicant that cash-in-lieu of the dedication of land for park purposes are required prior the issuance of a Building Permit and to ensure that if the applicant sells the lot, that the applicant (vendor) shall inform the purchaser of the requirement to pay cash-in-lieu of the dedication of land for park purposes prior to the issuance of a Building Permit.

PROCESS TO DETERMINE LAND VALUES AND COLLECTION OF CASH-IN-LIEU OF LANDS FOR PARK PURPOSES

1. Existing Lots

Upon receiving an application for a Building Permit, the Chief Building Official shall request the owner to provide a copy of the deed to the property where the lands have been recently purchased and the registration of the deed occurred less than twelve (12) months from the application for Building Permit. In all other cases, the applicant will be advised by the Planning Services Director that an appraisal is required, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. Upon receipt of the required appraisal, the Director of Community Planning & Development shall advise the Chief Building Official of the required cash-in-lieu payment and the Chief Building Official will collect the cash-in-lieu payment prior to the issuance of the Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected as per the conditions of development approval.

Where lands are vacant agricultural lands designated and/or zoned for agricultural purposes, the appraisal will be based on the first 0.4 hectares (1 acre) of the lands. No cash-in-lieu payment is required on vacant lands for Building Permits for agricultural purposes including barns, silos, greenhouses, storage buildings and accessory equipment, but excluding a building used for residential purposes.

2. Consent to Sever Applications

Upon receiving an application for a Building Permit, the Chief Building Official shall request the owner to provide a copy of the deed to the property where the lands have been recently purchased and the registration of the deed occurred less than twelve (12) months from the application for Building Permit. In all other cases, the applicant will be advised by the Planning Services Director that an appraisal is required, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. Upon receipt of the required appraisal, the Director of Community Planning & Development shall advise the Chief Building Official of the required cash-in-lieu payment and the Chief Building Official will collect the cash-in-lieu payment prior to the issuance of the Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected.

3. Plan of Subdivision Applications

Where lands are to be dedicated to the Town for park purposes, the dedication of land for park purposes shall be required by the subdivision agreement and shall be conveyed to the Town upon registration of the Plan of Subdivision.

Where lands are to be dedicated to the Town for park purposes, and the lands to be dedicated are in excess of the dedication amount required, the dedication of land for park purposes shall be required by the subdivision agreement and shall be conveyed to the Town upon registration of the Plan of Subdivision. At such time as the subdivision agreement is prepared, the Planning Services Department will acquire the necessary appraisal from a qualified appraiser. The appraisal shall establish the acquisition price for the lands in excess of the dedication requirement (which is subject to negotiation and the approval of Council). The payment to the owner for any over dedication shall be made upon registration of the Plan of Subdivision and the sale of the lands to the Town or other agreed upon settlement.

Where cash-in-lieu of lands for park purposes is required, the cash-in-lieu payment shall be required by the subdivision agreement. The agreement shall provide that cash-in-lieu of lands for park purposes will be required pursuant to Section 42 of the *Planning Act* and that such payment shall occur upon application for Building Permit. At such time as the subdivision agreement is prepared, the applicant may have the lots and/or blocks appraised by a qualified appraiser, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. The appraisal shall define the value of each type of lot and/or block to be created based on the appraised value of the lands subject of the application as of the day before the day of issuance of a Building Permit. The Planning Services Department shall file such appraisal in the appropriate subdivision file. The agreement shall also include provision that all appraisals are valid for a period of twelve (12) months, and that after such period, the Town may, at its sole discretion, require an updated appraisal. Upon application for Building Permit, the Chief Building Official shall collect the required cash-in-lieu of payment prior to the issuance of a Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected.

4. Site Plan Applications

Upon receiving an application for a Site Plan Approval, the Director of Community Planning & Development shall request the owner to provide a copy of the deed to the property where the lands have been recently purchased and the registration of the deed occurred less than twelve (12) months from the application for Site Plan Approval. In all other cases, the applicant will be advised by the Planning Services Director that an appraisal is required, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. Upon receipt of the required appraisal, the Director of Community Planning & Development shall advise the Chief Building Official of the required cash-in-lieu payment and the Chief Building Official will collect the cash-in-lieu payment prior to the issuance of the Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected.

5. Zoning By-Law Amendment Applications and all Other Development and Redevelopment Applications

In the case of Zoning By-law Amendment applications and other development and redevelopment applications where there is not a separate planning application such as a Consent to Sever, Plan of Subdivision or Site Plan Approval application, payment of cash-in-lieu of parkland dedication shall be required prior to the issuance of a Building Permit and payments shall be required pursuant to Section 42 of the *Planning Act*. Upon receipt of an application for a Building Permit, the

Chief Building Official shall request the Owner to provide a copy of the deed to the property where the lands have been recently purchased and the registration of the deed occurred less than twelve (12) months from the application for Building Permit. In all other cases, the applicant will be advised by the Director of Community Planning & Development that an appraisal is required, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. Upon receipt of the required appraisal, the Director of Community Planning & Development shall advise the Chief Building Official of the required cash-in-lieu payment and the Chief Building Official will collect the cash-in-lieu payment prior to the issuance of the Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected.

APPRAISAL FEES

All fees associated with all required appraisals shall be the responsibility of the applicant.

EXPIRY OF APPRAISALS

All appraisals shall be valid for a period of twelve (12) months. If for any reason, the development or redevelopment does not proceed during the twelve (12) month period, an updated appraisal may be required at the sole discretion of the Director of Community Planning & Development and all policies set out herein shall apply.

EXEMPT LANDS

Lands not considered suitable for parkland conveyance shall be determined by the Town. The Town retains the right to not accept the conveyance of any land that is considered to be unsuitable for park or public recreation purposes and without restricting the generality of the foregoing, land having any of the following features:

- Lands within any Environmental Protection designation and/or which have been identified as hazard lands, including associated setbacks and buffer zones;
- Steep or unstable slopes, including associated setbacks and buffer zones;
- Unstable soil or unconsolidated fill;
- Contaminants or are suspected of being contaminated as defined by Provincial regulations;
- Any easement, or right-of-way that limits or restricts the Town's use of the land; and/or,
- Lands that have been conveyed to the Town or other public agency for storm water management, conservation purposes, roadways, walkways/paths/trails, or any other non-parkland purposes.

PREPAYMENT

Prepayment of the cash-in-lieu of lands for park purposes may be made by an applicant for Building Permit prior to an appraisal being received to expedite the issuance of a Building Permit. The amount required shall be determined by the Director of Community Planning & Development and must be accompanied by a letter of understanding to pay any balance owing upon the proper appraisal being received. Any overpayment by the applicant shall be refunded forthwith by the Chief Building Official after proper appraisal and no interest shall be payable by the Town on such overpayment. Similarly, any underpayment shall become

immediately due and payable upon receipt of proper appraisal and no interest shall be required.

CREDIT

Any previous conveyance of parkland or payment of cash-in-lieu thereof shall be credited against parkland dedication or cash-in-lieu required.

The amount of the credit will be as paid and will not be considered with interest or at current value. This section applies to any agreement or actions pursuant to Sections 41, 51 or 53 of the *Planning Act*, or any successor thereto and such agreements or actions remain subject to the *Planning Act* as was in force at that time.

The provisions of this By-law do not apply where the owner applies for a Building Permit relating to development or redevelopment for structural improvements, repairs, replacement or enlargement of buildings or structures already located on the lands if the effect of such structural improvements, repairs, replacement or enlargements do not substantially increase the size or usability of one or more buildings on the lands.

MUNICIPAL ALLOCATION OF FUNDS

Cash-in-lieu of lands for park purposes reserve funds are allocated by the Council according to the following priorities:

- Acquisition of parkland to be used for park or other recreational purposes;
- Development of parkland, including grading, drainage, seeding or sodding, provision of playing fields, playground equipment, pathways and pathway lighting;
- Maintenance of lands, buildings or structures; and
- Acquisition of machinery and equipment for the maintenance of parkland.

PROCEDURES FOR THE ACQUISITION OF LAND FOR PARK PURPOSES

Where the Town intends to acquire lands for park purposes (in excess of the required dedication), the Town will enter into any necessary negotiations with the property owner to establish the acquisition price. The acquisition price is subject to the approval of Council.

APPEAL OF APPRAISALS

If, in the opinion of the Director of Community Planning & Development, the report of the appraisal is inappropriate or incorrect, the Director may request the provision of a revised or second appraisal.

If the Owner disagrees with the position of the Director, an appeal may be lodged with Council, and Council shall determine the appropriate action. Where Council and the Owner cannot agree on the cash-in-lieu of lands for park purposes, the provisions of the *Planning Act* shall apply.

REPEAL

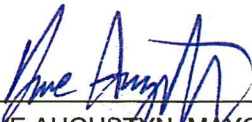
That By-law 2682(2005), being a by-law requiring land or cash-in-lieu thereof for park purposes be and is hereby REPEALED.

EFFECTIVE DATE

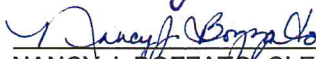
That this By-law shall become effective from and after the date of passing thereof.

ENACTED, SIGNED AND SEALED

THIS 1ST DAY OF JUNE, 2015 A.D.



DAVE AUGUSTYN, MAYOR



NANCY J. BOZZATO, CLERK

D By-Law No. 2682 (2005)

THE CORPORATION OF THE
TOWN OF PELHAM

BY-LAW NO. 2682 (2005)

Being a by-law requiring land or cash-in-lieu thereof for park or other public recreational purposes as a condition of consent and as a condition of development or redevelopment of land

WHEREAS subsection 42(1) of *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, provides that as a condition of development or redevelopment of land, the council of a local municipality may, by by-law applicable to the whole of the municipality or to any defined area of areas thereof, require that land in an amount not exceeding in the case of land proposed for development or redevelopment for commercial or industrial purposes two percent (2%), and in all other cases five percent (5%), of the land to be conveyed to the municipality for park or other public recreational purposes.

AND WHEREAS subsection 42(6) of said *Planning Act*, provides that the council of a local municipality may require the payment of money to the value of the land otherwise required to be conveyed under this section in lieu of the conveyance and the value of the land shall be determined as of the day before the day the building permit is issued in respect of the development or redevelopment or where more than one building permit is required for the development or redevelopment as of the day before the day the first building permit is issued.

AND WHEREAS subsection 42(7) of said *Planning Act* provides that if land has been conveyed or is required to be conveyed to a municipality for park or other public purposes or a payment of money in lieu of such conveyance has been received by the municipality or is owing to it under this section or a condition imposed under Section 51.1 or 53, no additional conveyance or payment may be required by a municipality in respect of the subsequent development unless:


1. there is a change in the proposed development or redevelopment which would increase the density of the development; or
2. land originally proposed for development or redevelopment for commercial or industrial purposes is now proposed for development or redevelopment for other purposes.

AND WHEREAS the Council of the Town of Pelham deems it necessary and expedient to establish policies to ensure adequate funding for the recreational and cultural needs of the Town of Pelham that may be attributable to new development.

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

1. Pursuant to subsection 42(1) of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, land in an amount not exceeding in the case of land proposed for development or redevelopment for commercial or industrial purposes two percent (2%) and in all other cases five percent (5%) of the land shall be conveyed to the Corporation of the Town of Pelham for park or other public recreational purposes as a condition of development or redevelopment of such land.
2. Pursuant to subsection 42(6) of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, the Council of the Corporation of the Town of Pelham may by resolution, require the payment of money to the Town of Pelham in lieu of the conveyance required under Section 1 of this By-law and the amount of such payment shall be to the value of the land otherwise required to be conveyed to the Town and for the purpose of determining the amount of such payment, the value of the land shall be determined as of the day before the day the building permit is issued in respect of the development or redevelopment or where more than one building permit is required for the development or redevelopment as of the day before the day the first building permit is issued.
3. The provisions of this By-law do not apply where owners apply to the Corporation of the Town of Pelham for a building permit relating to development or redevelopment of lands by way of structural improvement, repair, replacement or enlargement of buildings or structures already located on lands if the effect of such structural improvement, repair, replacement or enlargement do not substantially increase the size or usability of one or more buildings on the lands and for the purpose of this By-law, the words "substantially increase the size or usability" shall mean to provide more than the existing number of residential units in the case of residential land use or more than double the gross floor area of any structure on lands to be used for non-residential purposes.
4. The provisions of this By-law are applicable to all land under the jurisdiction of the Corporation of the Town of Pelham.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
20TH DAY OF JUNE, 2005 A.D.


MAYOR RONALD W. LEAVENS



CLERK CHERYL MICLETTE

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PURPOSE

The purpose of this Policy is to accomplish the following objectives:

1. Ensure that lands are dedicated for park purposes as a result of the development of land in the Town; and
2. Ensure that when dedication is not required, cash-in-lieu of land for park purposes is paid to the Town as a result of the development of land; and
3. Ensure the provision of guidelines directing Staff in carrying out the provisions of the Policy in a responsible and timely manner.

POLICY STATEMENT

This Policy shall be applied in a manner consistent with the policies of the Town of Pelham Official Plan policies, the provisions of the *Planning Act*, R.S.O. 1990, c.P.13, the provisions of By-law No. (to be approved) and any other applicable legislation.

DEFINITIONS

Building Permit shall mean an application for a building permit issued by the Chief Building Official of the Corporation of the Town of Pelham approving an application for the construction, reconstruction or alteration of any building or structure for which such permit is required pursuant to the provisions of the *Building Code Act*, S.O. 1992, c.23, as amended, or any successor thereto and the Town's Building By-law No. 2277(2001), as amended, being a by-law to implement and enforce the *Building Code Act* as amended, or any successor thereto.

Chief Building Official shall mean the Chief Building Official as appointed by by-law of the Council of the Corporation of the Town of Pelham.

Consent to Sever Application shall mean an application for consent pursuant to the provisions of Section 53 of the *Planning Act*, or any successor thereto.

Council shall mean the Council of the Corporation of the Town of Pelham.

Development/Redevelopment shall mean the construction, erection or placing of one or more buildings or structures on a lot or the making of an addition or alteration to a building or structure that has the effect of increasing the size or usability thereof. The words "substantially increase the size or usability" shall mean to provide more than the existing number of residential units in the case of residential land use or more than double the gross floor area of any structure on lands to be used for non-residential purposes.

Director of Planning Services shall mean the Director of Planning Services of the Corporation of the Town of Pelham.

Lot shall mean an existing parcel of land or a parcel of land created by Consent to Sever or registered Plan of Subdivision in accordance with the provisions of the *Planning Act*, or any successor thereto.

Plan of Subdivision Application shall mean an application for a plan of subdivision pursuant to the provisions of Section 51 of the *Planning Act*, or any successor thereto.

Qualified Appraiser shall mean a member of the Appraisal Institute of Canada.

Site Plan Application shall mean an application for Site Plan Approval pursuant to the provisions of Section 41 of the *Planning Act*, or any successor thereto.

Substantial increase to the size or usability of a Building or Structure shall mean to provide more than the existing number of residential units in the case of any lot used for residential purposes or more than double the gross floor area of any building or structure on the lot to be used for non-residential purposes.

Town means the Corporation of the Town of Pelham.

Zoning By-law Amendment Application shall mean an application to amend Town of Pelham Zoning By-law No. 1136 (1987), as amended, pursuant to the provisions of Section 34 of the *Planning Act*, or any successor thereto.

EFFECTIVE DATE OF POLICY

This Policy shall take effect on the 20TH day of June, 2005 (By-law No. 2682 (2005)).

GENERAL POLICIES

1. Parkland dedication or cash-in-lieu thereof is required pursuant to the provisions of Section 42 of the *Planning Act*, or any successor thereto, as a condition of development or redevelopment of lands within the Town, in the amount of two per cent (2%) for commercial or industrial and five per cent (5%) in all other cases.
2. The Town may require the dedication of land for park purposes where the location of the parkland has been determined in accordance with the policies of the Town of Pelham Official Plan. All parkland acquisition in excess of five per cent (5%) shall be at a price negotiated with the Owner and shall be subject to the approval of Council.

3. The Town shall require cash-in-lieu of the dedication of land for park purposes where lands are not required for park purposes.
4. The Town's policies with respect to the requirements for cash-in-lieu of the dedication of land for park purposes are as stated in the Town's Official Plan. The requirements are as set out in By-law No. 2682 (2005).
5. Where reference is made in this Policy to appraisals, a letter of opinion from a qualified appraiser shall be acceptable.

DETAILED POLICIES

The dedication and acquisition of parkland as well as the collection of cash-in-lieu thereof shall be required as follows:

1. Existing Vacant Lots

The Town will not accept the dedication of land for existing vacant lots, but will require cash-in-lieu of dedication. Such payment shall be required pursuant to the provisions of Section 42 of the *Planning Act* prior to the issuance of any Building Permit for the vacant lot.

2. Consent to Sever Applications

Concerning lots resulting from applications for Consent to Sever, the Town will not accept land but will require cash-in-lieu of the dedication of land for park purposes. Said payment shall be required pursuant to the provisions of Section 42 of the *Planning Act* prior to the issuance of a Building Permit. The Planning Services Department shall advise the Committee of Adjustment upon circulation that the Town requires payment of cash-in-lieu of the dedication of land pursuant to the provisions of Section 42 of the *Planning Act*, upon the issuance of any Building Permit for either the severed or retained parcel whichever, is the vacant lot. Planning Services Staff will further request the Committee of Adjustment to impose the following condition of approval:

That the applicant(s) sign the Town of Pelham's standard "Memorandum of Understanding" explaining that development charges and cash-in-lieu of the dedication of land for park purposes are required prior the issuance of a Building Permit.

The purpose of the "Memorandum of Understanding" is to advise the applicant that cash-in-lieu of the dedication of land is required prior the issuance of a Building Permit and to ensure that if the applicant sells the lot, that the applicant (vendor) informs the purchaser of the requirement to pay cash-in-lieu of the dedication of land prior to the issuance of a Building Permit.

3. Plan of Subdivision Application

During the review of the application for draft plan approval, the Planning Services Department shall review the plan with the policies of the Town of Pelham Official Plan to determine if lands have been identified for parkland acquisition. Where the Official Plan identifies that lands are required for acquisition, the Planning Services Department shall ensure that the following condition of draft plan approval is included in the Staff report to the General Committee, Planning Services Division:

Pursuant to the provisions of the Planning Act, that the Owner convey Block ___ to the Town for park purposes.

In some instances, it will be necessary for the applicant to convey lands in excess of the two percent (2%) or five percent (5%) requirement where lands have been identified in the Official Plan for parkland acquisition. Where lands in excess of the two percent (2%) or five percent (5%) requirement, the Planning Services Department shall ensure that the following condition of draft plan approval is included in the Staff report to the General Committee, Planning Services Division:

Pursuant to the provisions of the Planning Act, that the Owner convey Block ___ to the Town for park purposes and that the Town negotiate with the Owner the value of those lands in excess of the 5% park dedication requirements of the Planning Act.

Where lands have not been identified for acquisition in the Official Plan, the Town shall require cash-in-lieu of the dedication. In such circumstances, the Planning Services Department shall ensure that the following condition of draft plan approval is included in the Staff report to the General Committee, Planning Services Division:

That the Owner agrees in the Agreement to pay cash-in-lieu of land for park purposes for each lot and/or block prior to the issuance of a Building Permit pursuant to Section 42 of the Planning Act, R.S.O. 1990.

4. Site Plan Application

With respect to applications for Site Plan Approval, the Town will require cash-in-lieu of the dedication of land in accordance with the provisions of Section 42 of the *Planning Act* prior to the issuance of any Building Permit for the development.

The Planning Services Department shall include the following clause in the Site Plan Agreement:

The Owner acknowledges and agrees that neither the Owner, or any person under its authority shall be entitled to the issuance of any Building Permit to construct any building or structure contemplated by this Agreement and that the Town shall be under no obligation to issue a Building Permit on the

Lands until the required cash-in-lieu of land for park purposes has been paid to the Town.

5. Zoning By-law Amendment Application

With respect to applications for Zoning By-law Amendment, the Town will require cash-in-lieu of the dedication of land in accordance with the provisions of Section 42 of the *Planning Act* prior to the issuance of any Building Permit.

Planning Services Staff will further advise the General Committee, Planning Services Division, in the Staff report to impose the following condition of approval:

That the applicant(s) sign the Town of Pelham's standard "Memorandum of Understanding" which explains that the development charges and cash-in-lieu of the dedication of land for park purposes are required prior the issuance of a Building Permit.

The purpose of the "Memorandum of Understanding" is to advise the applicant that cash-in-lieu of the dedication of land for park purposes are required prior the issuance of a Building Permit and to ensure that if the applicant sells the lot, that the applicant (vendor) shall inform the purchaser of the requirement to pay cash-in-lieu of the dedication of land for park purposes prior to the issuance of a Building Permit.

PROCESS TO DETERMINE LAND VALUES AND COLLECTION OF CASH-IN-LIEU OF LANDS FOR PARK PURPOSES

1. Existing Lots

Upon receiving an application for a Building Permit, the Chief Building Official shall request the owner to provide a copy of the deed to the property where the lands have been recently purchased and the registration of the deed occurred less than twelve (12) months from the application for Building Permit. In all other cases, the applicant will be advised by the Planning Services Director that an appraisal is required, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. Upon receipt of the required appraisal, the Director of Planning Services shall advise the Chief Building Official of the required cash-in-lieu payment and the Chief Building Official will collect the cash-in-lieu payment prior to the issuance of the Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected.

Where lands are vacant agricultural lands designated and/or zoned for agricultural purposes, the appraisal will be based on the first 0.4 hectares (1 acre) of the lands. No cash-in-lieu payment is required on vacant lands for Building Permits for agricultural purposes including barns, silos, greenhouses, storage buildings and accessory equipment, but excluding a building used for residential purposes.

2. Consent to Sever Applications

Upon receiving an application for a Building Permit, the Chief Building Official shall request the owner to provide a copy of the deed to the property where the lands have been recently purchased and the registration of the deed occurred less than twelve (12) months from the application for Building Permit. In all other cases, the applicant will be advised by the Planning Services Director that an appraisal is required, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. Upon receipt of the required appraisal, the Director of Planning Services shall advise the Chief Building Official of the required cash-in-lieu payment and the Chief Building Official will collect the cash-in-lieu payment prior to the issuance of the Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected.

3. Plan of Subdivision Applications

Where lands are to be dedicated to the Town for park purposes, the dedication of land for park purposes shall be required by the subdivision agreement and shall be conveyed to the Town upon registration of the Plan of Subdivision.

Where lands are to be dedicated to the Town for park purposes, and the lands to be dedicated are in excess of the five per cent (5%) requirement, the dedication of land for park purposes shall be required by the subdivision agreement and shall be conveyed to the Town upon registration of the Plan of Subdivision. At such time as the subdivision agreement is prepared, the Planning Services Department will acquire the necessary appraisal from a qualified appraiser. The appraisal shall establish the acquisition price for the lands in excess of the five per cent (5%) requirement (which is subject to negotiation and the approval of Council). The payment to the owner for any over dedication shall be made upon registration of the Plan of Subdivision and the sale of the lands to the Town.

Where cash-in-lieu of lands for park purposes is required, the cash-in-lieu payment shall be required by the subdivision agreement. The agreement shall provide that cash-in-lieu of lands for park purposes will be required pursuant to Section 42 of the *Planning Act* and that such payment shall occur upon application for Building Permit. At such time as the subdivision agreement is prepared, the applicant may have the lots and/or blocks appraised by a qualified appraiser, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. The appraisal shall define the value of each type of lot and/or block to be created based on the appraised value of the lands subject of the application as of the day before the day of issuance of a Building Permit. The Planning Services Department shall file such appraisal in the appropriate subdivision file. The agreement shall also include provision that all appraisals are valid for a period of twelve (12) months, and that after such period, the Town may, at its sole discretion, require an updated appraisal. Upon application for Building Permit, the Chief Building Official shall collect the required cash-in-lieu of payment prior to the issuance of a Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected.

4. Site Plan Applications

Upon receiving an application for a Site Plan Approval, the Director of Planning Services shall request the owner to provide a copy of the deed to the property where the lands have been recently purchased and the registration of the deed occurred less than twelve (12) months from the application for Site Plan Approval. In all other cases, the applicant will be advised by the Planning Services Director that an appraisal is required, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. Upon receipt of the required appraisal, the Director of Planning Services shall advise the Chief Building Official of the required cash-in-lieu payment and the Chief Building Official will collect the cash-in-lieu payment prior to the issuance of the Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected.

5. Zoning By-Law Amendment Applications and all Other Development And Redevelopment Applications

In the case of Zoning By-law Amendment applications and other development and redevelopment applications where there is not a separate planning application such as a Consent to Sever, Plan of Subdivision or Site Plan Approval application, payment of cash-in-lieu of parkland dedication shall be required prior to the issuance of a Building Permit and payments shall be required pursuant to Section 42 of the *Planning Act*. Upon receipt of an application for a Building Permit, the Chief Building Official shall request the Owner to provide a copy of the deed to the property where the lands have been recently purchased and the registration of the deed occurred less than twelve (12) months from the application for Building Permit. In all other cases, the applicant will be advised by the Planning Services Director that an appraisal is required, wherein the value is to be determined as of the day before the day of issuance of a Building Permit. Upon receipt of the required appraisal, the Director of Planning Services shall advise the Chief Building Official of the required cash-in-lieu payment and the Chief Building Official will collect the cash-in-lieu payment prior to the issuance of the Building Permit. The Chief Building Official shall not issue a Building Permit until all required cash-in-lieu fees are collected.

APPRAISAL FEES

All fees associated with all required appraisals shall be the responsibility of the applicant.

EXPIRY OF APPRAISALS

All appraisals shall be valid for a period not exceeding twelve (12) months. If for any reason, the development or redevelopment does not proceed during the twelve (12) month period, an updated appraisal may be required and all policies set out herein shall apply.

EXEMPT LANDS

As required in the Town's Official Plan, any previous or concurrent conveyance of land to the Town or other government body for floodplain, conservation, roadway, drainage works or any other non-parkland purposes shall not be credited against the parkland dedication or cash-in-lieu thereof required.

PREPAYMENT

Prepayment of the cash-in-lieu of lands for park purposes may be made by an applicant for Building Permit prior to an appraisal being received to expedite the issuance of a Building Permit. The amount required shall be determined by the Director of Planning Services and/or the Chief Building Official and must be accompanied by a letter of understanding to pay any balance owing upon the proper appraisal being received. Any overpayment by the applicant shall be refunded forthwith by the Chief Building Official after proper appraisal and no interest shall be payable by the Town on such overpayment. Similarly, any underpayment shall become immediately due and payable upon receipt of proper appraisal and no interest shall be required.

CREDIT

Any previous conveyance of parkland or payment of cash-in-lieu thereof shall be credited against parkland dedication or cash-in-lieu required.

The amount of the credit will be as paid and will not be considered with interest or at current value. This section applies to any agreement or actions pursuant to Sections 41, 51 or 53 of the *Planning Act*, or any successor thereto and such agreements or actions remain subject to the *Planning Act* as was in force at that time.

The provisions of this policy do not apply where the owner applies for a Building Permit relating to development or redevelopment for structural improvements, repairs, replacement or enlargement of buildings or structures already located on the lands if the effect of such structural improvements, repairs, replacement or enlargements do not substantially increase the size or usability of one or more buildings on the lands.

MUNICIPAL ALLOCATION OF FUNDS

Cash-in-lieu of lands for park purposes reserve funds are allocated by the Council according to the following priorities:

- Acquisition of parkland to be used for park or other recreational purposes;
- Development of parkland, including grading, drainage, seeding or sodding, provision of playing fields, playground equipment, pathways and pathway lighting;
- Maintenance of lands, buildings or structures; and
- Acquisition of machinery and equipment for the maintenance of parkland.

PROCEDURES FOR THE ACQUISITION OF LAND FOR PARK PURPOSES

Where the Town intends to acquire lands for park purposes (in excess of five per cent (5%)), the Town will enter into any necessary negotiations with the property owner to establish the acquisition price. The acquisition price is subject to the approval of Council.

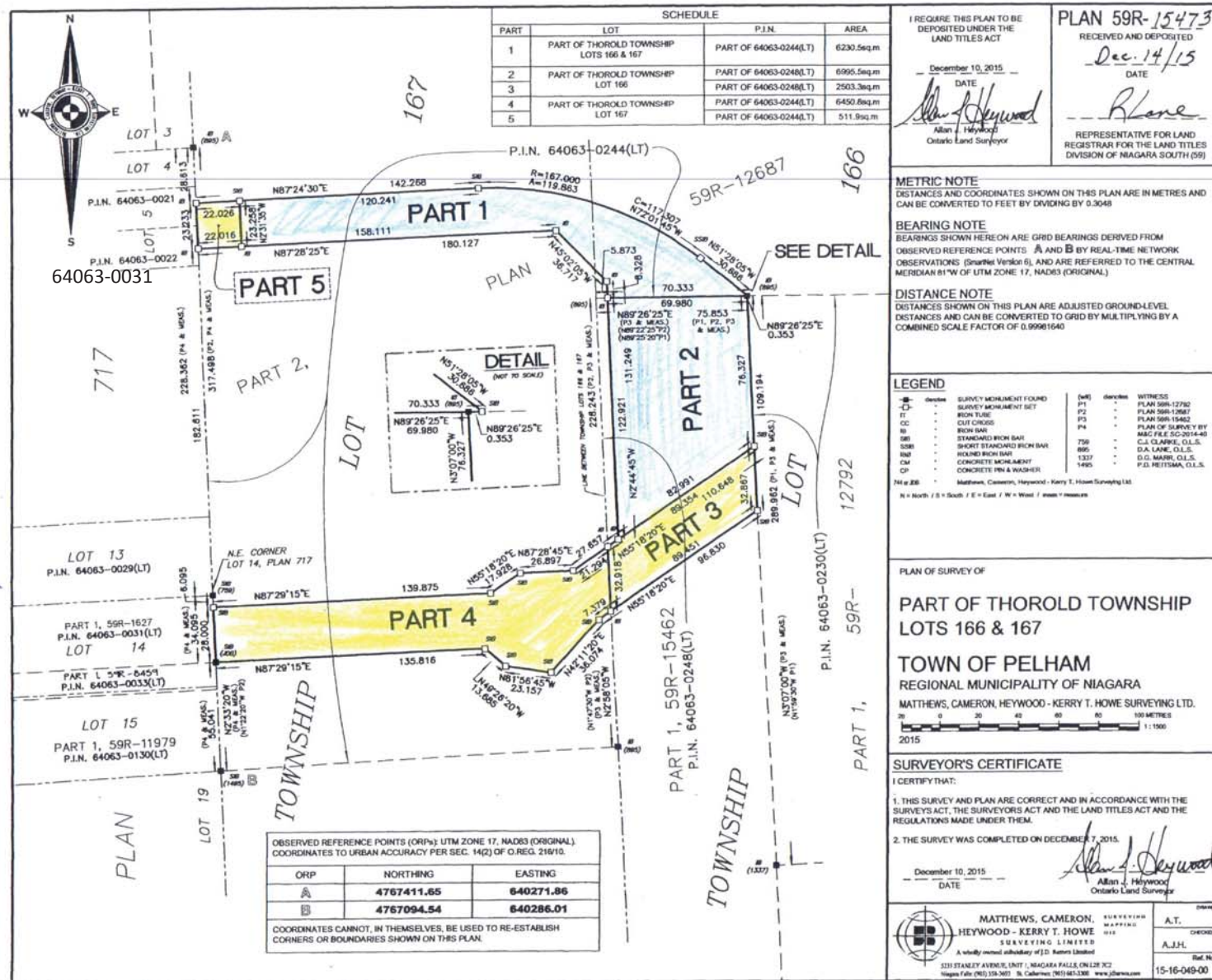
APPEAL OF APPRAISALS

If, in the opinion of the Director of Planning Services, the report of the appraisal is inappropriate or incorrect, the Director may request the provision of a revised or second appraisal.

If the Owner disagrees with the position of the Director, an appeal may be lodged with Council, and Council shall determine the appropriate action. Where Council and the Owner cannot agree on the cash-in-lieu of lands for park purposes, the provisions of the *Planning Act* shall apply.

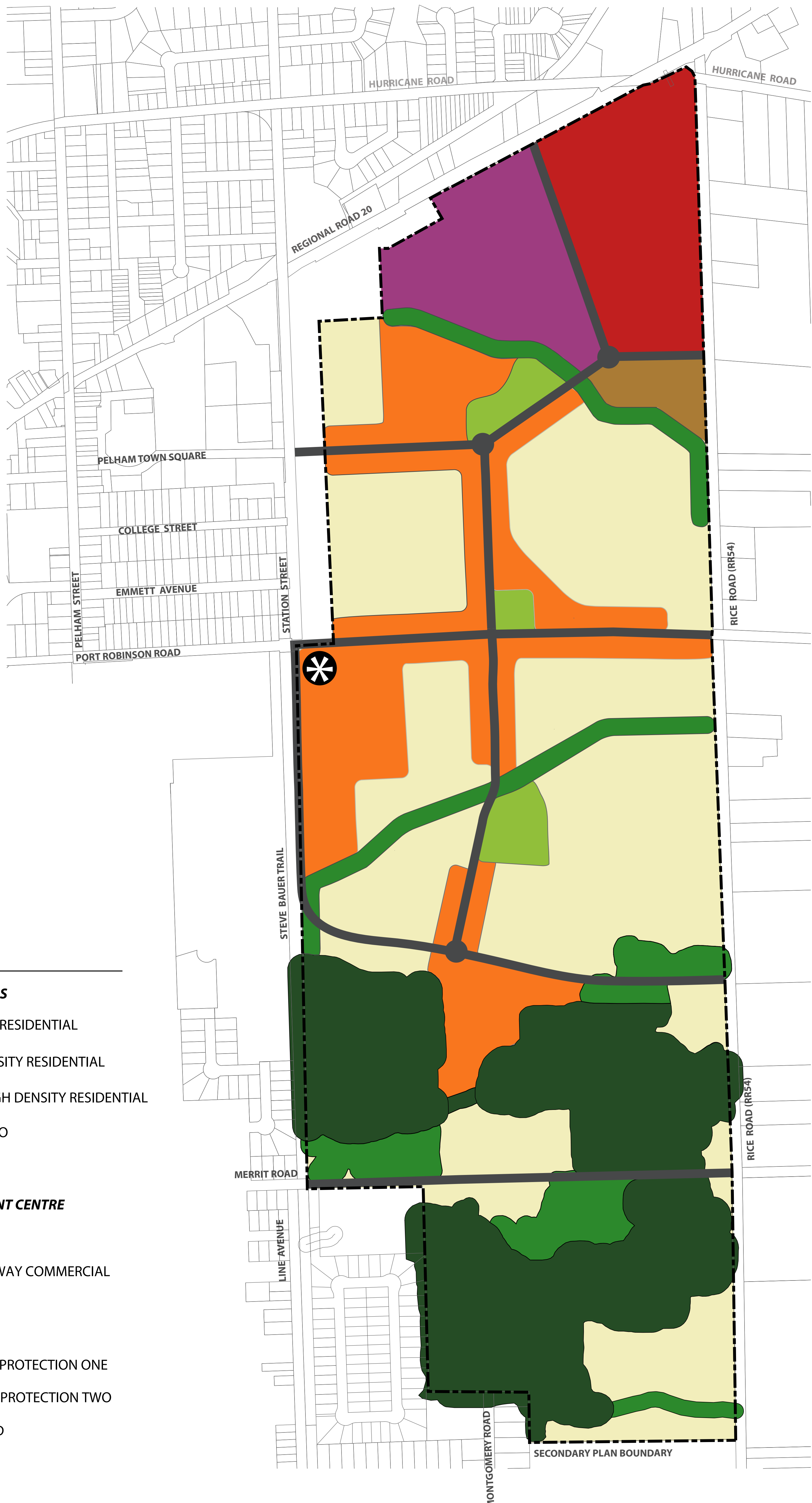
E Plan 59-R-15473 Deposited Under the Land Titles Act

E Plan 59-R-15473 Deposited Under the Land Titles Act



F Schedule 'A5' – Land Use Plan – Official Plan

EAST FONTHILL SECONDARY PLAN AREA SCHEDULE 'A5' - LAND USE PLAN



LEGEND

RESIDENTIAL NEIGHBOURHOODS

- EF- LOW DENSITY RESIDENTIAL
- EF - MEDIUM DENSITY RESIDENTIAL
- EF - MEDIUM / HIGH DENSITY RESIDENTIAL
- ✱ LANDS SUBJECT TO POLICY B1.7.7.4 I)

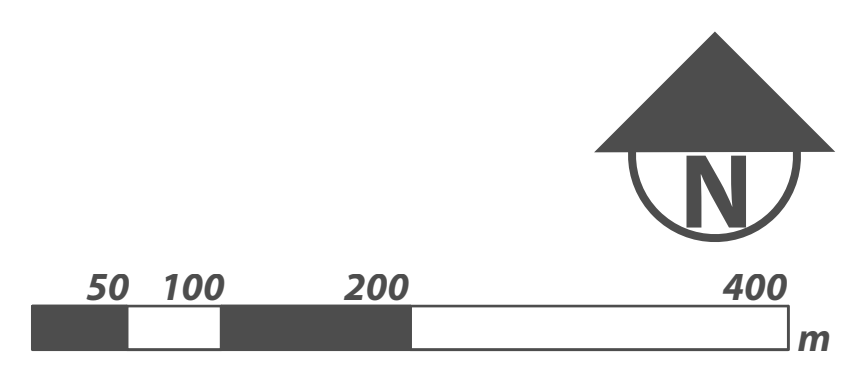
THE COMMERCIAL / EMPLOYMENT CENTRE

- EF - MIXED USE
- EF - URBAN HIGHWAY COMMERCIAL

THE GREENLAND SYSTEM

- ENVIRONMENTAL PROTECTION ONE
- ENVIRONMENTAL PROTECTION TWO
- PUBLIC PARKLAND

Note:
Approved by Board Order # PL121306
Issued on January 30, 2014



G February 2015 Letter from Town CAO to David Allen

2015.02.25

Mr. David Allen
Fonthill Gardens Inc.
4211 Yonge Street, Suite 230
Toronto, ON M2P 2A9

RE: Parkland Dedication in the East Fonthill Secondary Plan Area

Dear Mr. Allen:

The purpose of this letter is to confirm an understanding achieved in our negotiations concerning an anticipated over-dedication of lands by your company in the East Fonthill Secondary Plan Area. The following sets out the Town's understanding of the agreement which has been reached and which will be implemented in a more formal Agreement document at the time of the conveyance of the parkland dedication.

Background

The East Fonthill Secondary Plan, forming part of the Official Plan of the Town of Pelham, designates certain lands on Schedule A5 – Land Use Plan, which lands are to form public parkland within the East Fonthill Secondary Plan Area. The lands owned by your company contain a very large portion of the parkland designated in the Official Plan, north of Port Robinson Road. Upon approval of one or more plans of subdivision, the Town will require that those lands designated in the East Fonthill Secondary Plan, contained within your company's lands, be dedicated to the Town of Pelham as parkland dedication. It is anticipated that this dedication will greatly exceed the area of land required to be dedicated on the basis of five (5%) percent of the lands in question.

Proposed Resolution

In the usual course, the Town would purchase from you those lands which exceed the required dedication of five (5%) percent of the area of the land being developed. However, the parkland fund does not have sufficient funds to acquire those additional lands from you.

We have proposed the following alternative. Town of Pelham By-law 2682 (2005), being a by-law requiring land or cash in lieu thereof for park or other public recreational purposes

From the Office of the CAO

The logo for Administration Services features a stylized circular emblem on the left, composed of four overlapping segments in orange, green, purple, and blue. To the right of the emblem, the words "Administration" and "Services" are stacked vertically in a bold, sans-serif font.

has attached to it a policy for parkland dedication. That policy requires that "where lands in excess of the two percent (2%) or five percent (5%) requirement, the Planning Services Department shall ensure that the following condition of draft plan approval is included in the staff report to the General Committee, Planning Services Division;"

"Pursuant to the provisions of the Planning Act, that the Owner convey Block _____ to the Town for park purposes and that the Town negotiate with the Town the value of those lands in excess of the 5% park dedication requirements of the Planning Act."

The policy then contains a process to determine land values and collection of cash in lieu of lands for park purposes. For a plan of subdivision application, the policy has this to say:

"Where lands are to be dedicated to the Town for park purposes, and the lands to be dedicated are in excess of the five percent (5%) requirement, the dedication of land for park purposes shall be required by the Subdivision Agreement and shall be conveyed to the Town upon registration of the plan of subdivision. At such time as the Subdivision Agreement is prepared, the Planning Services Department will acquire the necessary appraisal from a qualified appraiser. The appraisal shall establish the acquisition price for the lands in excess of the five percent (5%) requirement (which is subject to negotiation and the approval of Council). The payment to the owner for any over dedication shall be made upon registration of the plan of subdivision and the sale of the lands to the Town."

It is the intention of the Town to follow the above quoted policy. However, as noted above, the park fund does not have sufficient monies available to acquire the "over dedication" which will result from the dedication of your lands. Consequently, the Town proposes that the Town will reimburse Fonthill Gardens Inc. for any park dedication and/or development charges, which come due to the Town of Pelham over and above the park dedication addressed by this Agreement, for any lands within the Town of Pelham on a dollar for dollar basis, until Fonthill Gardens Inc. has been completely reimbursed for the appraised value of the over dedication described in this letter.

Notwithstanding the provisions of By-law #2682 (2005), it is the intention of the Town to appraise lands which are the subject of this Agreement, to determine the cash-in-lieu requirement for parkland dedication, which appraisal shall value the lands as being ready for issuance of building permits.

The Agreement outlined in this letter shall be honoured by the Town of Pelham so long as Fonthill Gardens Inc. owns and develops land in the Town of Pelham.

Fonthill Gardens Inc. shall have the right to assign all or any portion of its right to reimbursement outlined in this letter to other developers or builders for such compensation as is determined by Fonthill Gardens Inc.

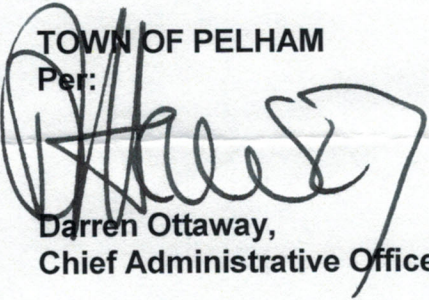
It is intended that the terms of this letter of understanding will be incorporated into an Agreement to be entered into at the time of the conveyance of the parkland dedication by Fonthill Gardens Inc. to the Town of Pelham, which Agreement shall be binding upon the Town of Pelham, Fonthill Gardens Inc. and their heirs, successors and assigns.

I trust that this outlines the solution which we have negotiated.

Sincerely,

TOWN OF PELHAM

Per:



**Darren Ottaway,
Chief Administrative Officer**