

Chair and Members of Committee of Adjustment
The Township of Wainfleet
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Date: March 28, 2024

Our Ref: 144329

**SUBJECT: APPLICATION FOR CONSENT TO SEVER AND MINOR VARIANCE AT 11629 LAKESHORE ROAD,
THE TOWNSHIP OF WAINFLEET**

Dear Chair and Members of Committee of Adjustment,

1.0 Introduction

Arcadis Professional Services (Canada) Inc. (“Arcadis”) has been retained by the owner to provide an independent planning opinion on the application for Consent to Sever (“consent”) pertaining to 11629 Lakeshore Road, Wainfleet (herein referred to as the “subject lands”). The purpose of the consent is to sever approximately 0.40 hectares of the subject lands containing the existing dwelling and a detached garage, and retain approximately 6.27 hectares of the subject lands, which will contain the former accessory farm building and is planned to be developed with a future single detached dwelling, which is not part of the subject applications. This brief provides the required analysis, including a review of the subject lands, provincial and local policy. It is our opinion that the applications should be approved by the Committee of Adjustment.

2.0 Site Location and Context

The subject lands are municipally known as 11629 Lakeshore Road, Wainfleet and are legally described as Concession 1, Part of Lot 16, Part of Road Allowance, Parts 1, 5 & 6 of RP 59R-16066. The subject lands have an approximate lot area of 6.67 hectares and a frontage of 216.39 metres along Lakeshore Road. Please refer to **Figure 1** for an aerial image of the subject lands. As seen in **Figure 2**, the subject lands currently contain a two-storey single detached dwelling, two detached garages, a ‘play house’, and the former accessory farm building, which is currently being used as a storage structure. The Niagara Peninsula Conservation Authority (“NPCA”) regulates the subject lands as it is impacted by the Lake Erie Shoreline Flood and Erosion Hazard. In terms of the surrounding context, the subject lands are located within a rural area with predominantly agricultural uses punctuated by forested lands and single detached dwellings.



Figure 1: Aerial Image of Subject Lands, Retrieved from Geowarehouse



Figure 2: Streetview of Subject Lands, Retrieved from Google Streetview

3.0 Proposed Application

The current development proposal is to separate the existing dwelling lot from the larger parcel. The lands to be severed (Parcel 1), which will contain the existing dwelling, a detached garage, and the 'play house', will have an approximate lot area of 0.40 hectares and lot frontage of 69.85 metres along Lakeshore Road. The lands to be retained (Parcel 2), which will contain the a detached garage, and the former accessory farm building, is planned to be developed with a single detached dwelling, which is not part of the subject applications, and will have an approximate lot area of 6.27 hectares and lot frontage of 146.54 metres along Lakeshore Road. Please refer to **Figure 3** for the Severance Sketch prepared by Rasch & Hyde Ltd. In the context of establishing the proposed consent, a Minor Variance is required to permit the erection of the accessory building prior to the erection of the principal dwelling.

The *Planning Act* requires that Minor Variance applications meet the four tests within Section 45, to ensure good planning to support requested variances. In our opinion, this proposal does maintain the general intent and purpose of the Official Plan and Zoning By-law, is desirable for the appropriate development use of the lands and is minor in nature. A more in-depth explanation, based on applicable legislation, policy and contextual information, is provided below to support our opinion.

Committee of Adjustment
 The Township of Wainfleet
 March 27, 2024

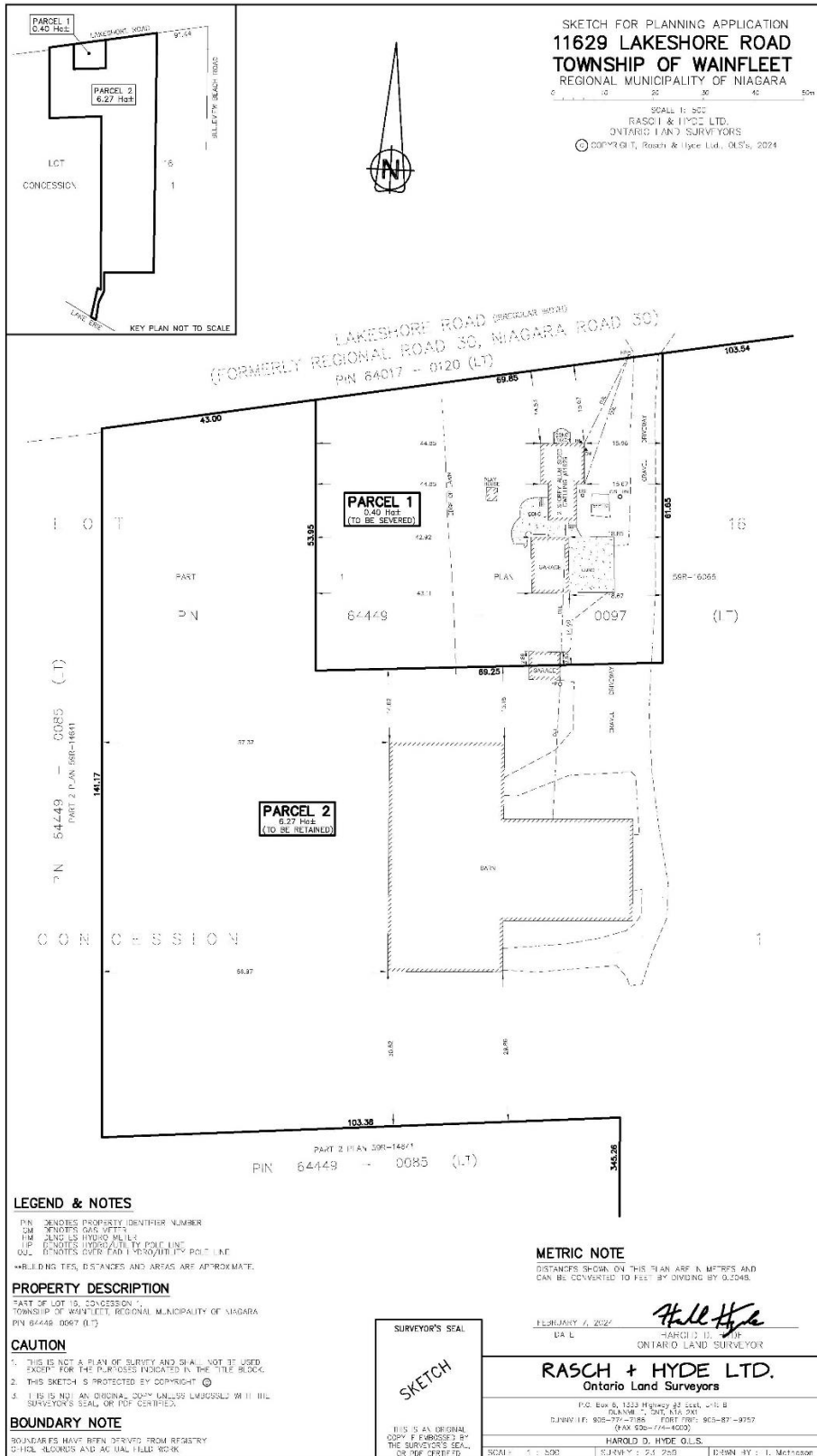


Figure 3: Proposed Severance Sketch

4.0 Pre-consultation Meeting

Prior to submitting an application, a Pre-consultation Meeting (“meeting”) with the Township Departments and external agencies is required. The purpose of the meeting is to review a proposed development and identify high-level issues to determine the scope of information, plans, studies and/or reports required to be submitted as part of a complete application.

A meeting occurred on September 14, 2023, to discuss the proposed application and the necessary planning approvals. The meeting confirmed that a Consent (Severance) Application would be required.

The following forms, plans, studies, reports, and materials identified as required by the Township for a complete consent application have been submitted with the application:

- Archaeological Assessment;
- Hydrogeological Study;
- Minimum Distance Separation (MDS) Review;
- Noise Impact Study; and,
- Planning Brief.

5.0 Applicable Planning Policy and Legislation

The subject lands are subject to several Provincial and local policy and legislative documents with respect to land use planning. These will be dealt with in the subsections below.

5.1 Planning Act

Section 50 of the Planning Act regulates the subdivision of land. Subsection 50 (3) (f) requires that a consent must be granted for a person to convey land. This application is under Section 53, complying with the Consent Approval process and meets the required criteria for land division as set out in Subsection 53(12), which provides the powers to the Committee to make decisions with respect to severing lots, which states the following:

*(12) Powers – A council or the Minister in determining whether a provisional consent is to be given shall have regard to the matters **under subsection 51 (24)** and has the same powers as the approval authority has under subsection 51 (25) with respect to the approval of a plan of subdivision and subsections 51 (26) and (27) and section 51.1 apply with necessary modifications to the granting of a provisional consent.*

Subsection 51 (24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) *the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;*

The Powers of the Committee of Adjustment with respect to minor variances are provided by subsection 45 (1) of the Planning Act, which states the following:

(1) Powers of committee – The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable

for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.

Planning Comment: Matters of provincial interest include the protection of ecological systems and agricultural resources as well as the conservation of features of significant archaeological interest. The proposed consent will not negatively affect the aforementioned features. An in-depth explanation will be provided in **Sections 5.4** and **5.5** below.

5.2 Provincial Policy Statement, 2020

The Provincial Policy Statement 2020 (“PPS”) was issued under section 3 of the *Planning Act* and came into effect May 1, 2020. It replaces the PPS issued April 30, 2014, and applies to all decisions in respect of the exercise of any authority that affects a planning matter made on or after this date. Planning decisions are to be consistent with the PPS. Therefore, the proposed application is subject to the PPS, including the following:

Subsection 1.1 Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns

Policy 1.1.1 *Healthy, liveable and safe communities are sustained by:*

- a) *promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities over the long term;*
- b) *accommodating an appropriate affordable and market-based range and mix of residential types (including single-detached, additional residential units, multi-unit housing, affordable housing and housing for older persons), employment (including industrial and commercial), institutional (including places of worship, cemeteries and long-term care homes), recreation, park and open space, and other uses to meet long-term needs;*
- c) *avoiding development and land use patterns which may cause environmental or public health and safety concerns;*

Subsection 1.1.5 Rural Lands in Municipalities

Policy 1.1.5.2 *On rural lands located in municipalities, permitted uses are:*

- c) *residential development, including lot creation, that is locally appropriate;*

Policy 1.1.5.8 *New land uses, including the creation of lots, and new or expanding livestock facilities, shall comply with the minimum distance separation formulae.*

Subsection 2.1 Natural Heritage

Policy 2.1.1 *Natural features and areas shall be protected for the long term.*

Subsection 2.3 Agriculture

Policy 2.3.1 *Prime agricultural areas shall be protected for long-term use for agriculture.*

Subsection 2.6 Cultural Heritage and Archaeology

Policy 2.6.1 *Significant built heritage resources and significant cultural heritage landscapes shall be conserved.*

Policy 2.6.2 *Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved.*

PPS Conclusion: Severing the existing dwelling and garage from the remnant parcel, containing the shed and accessory building to construct a single detached dwelling is compatible with the surrounding properties, as it will maintain the rural character of the neighbourhood and will not introduce any adverse impacts to the adjacent properties by establishing appropriate setbacks.

Furthermore, the proposed consent application will conserve the natural heritage, agricultural resources, and archaeological resources of the subject lands and surrounding area. Due to the proximity to Lake Erie, the subject lands are impacted by the Lake Erie Shoreline Flood and Erosion Hazard. However, as confirmed by the NPCA, the retained lot displays sufficient room outside of the shoreline flood hazard limit.

The subject lands are designated as 'Rural Lands' in the PPS, Growth Plan, and Niagara Official Plan, in which the predominant use is agriculture, however the proposed consent will not change the existing use, which is currently residential. Therefore, there will be no impact to the agricultural resources. Furthermore, the subject lands are within an Area of Archaeological Potential within the Niagara Official Plan. A Stage 1-2 Archaeological Assessment was prepared by AMICK Consultants Ltd. on February 8, 2024, and was submitted to the Ontario Ministry of Citizenship and Multiculturalism. The assessment concluded that, "no archaeological resources were encountered. As such, there will be no impacts to archaeological resources. An in-depth explanation will be provided in **Sections 5.4** and **5.5** below.

5.3 Growth Plan for the Greater Golden Horseshoe, 2019

A Place to Grow, the Growth Plan for the Greater Golden Horseshoe ("Growth Plan") provides the framework for implementing the Government of Ontario's vision for building stronger, prosperous communities by better managing growth in the region to 2051. The 2019 version of the growth was amended, taking effect August 28, 2020. Section 5(b) of the Planning Act requires decisions that affect planning matters shall conform to provincial plans, including the Growth Plan, or shall not conflict with them, as the case may be. The proposed application is subject to the Growth Plan, including the following:

Subsection 2.2.9 Rural Areas

Policy 2.2.9.3 *Subject to the policies in Section 4, development outside of settlement areas may be permitted on rural lands for:*

- a) *the management or use of resources;*
- b) *resource-based recreational uses; and*
- c) *other rural land uses that are not appropriate in settlement areas provided they*
 - i. *are compatible with the rural landscape and surrounding local land uses;*
 - ii. *will be sustained by rural service levels; and*
 - iii. *will not adversely affect the protection of agricultural uses and other resource-based uses such as mineral aggregate operations*

Policy 2.2.9.6 *New multiple lots or units for residential development will be directed to settlement areas, but may be allowed on rural lands in site-specific locations with approved zoning or designation in an official plan that permitted this type of development as of June 16, 2006.*

Planning Comment: The subject lands are not within a settlement area and are designated as 'Rural Lands' in the PPS, Growth Plan, and Niagara Official Plan. The Niagara Official Plan outlines that "the predominant use of rural lands will continue to be agriculture, but some non-agricultural related development may be permitted". As outlined above, the proposed consent will not change the existing use of the subject lands, which is currently residential. Please refer to Section 5.4 for more detail.

Subsection 4.2.4 Lands Adjacent to Key Hydrologic Features and Key Natural Heritage Features

Policy 4.2.4.1 *Outside settlement areas, a proposal for new development or site alteration within 120 metres of a key natural heritage feature within the Natural Heritage System for the Growth Plan or a key hydrologic feature will require a natural heritage evaluation or hydrologic evaluation that identifies a vegetation protection zone, which:*

- a) is of sufficient width to protect the key natural heritage feature or key hydrologic feature and its functions from the impacts of the proposed change;*
- b) is established to achieve and be maintained as natural self-sustaining vegetation; and*
- c) for key hydrologic features, fish habitat, and significant woodlands, is no less than 30 metres measured from the outside boundary of the key natural heritage feature or key hydrologic feature.*

Subsection 4.2.6 Agricultural System

Policy 4.2.6.5 *The retention of existing lots of record for agricultural uses is encouraged, and the use of these lots for non-agricultural uses is discouraged.*

Planning Comment: While the subject lands are located within close proximity to Lake Erie as seen in **Figure 1**, the proposed consent application will not negatively affect the key hydrologic features of Lake Erie as there is no change in the land use being requested and appropriate setbacks are provided from the proposed single detached dwelling. Furthermore, agricultural uses are not currently operating on the subject lands. The proposed retained lands contain an existing accessory structure which was formerly used as a horse barn and riding arena but will be used as a storage structure.

5.4 2022 Niagara Official Plan

Niagara Regional Council adopted the Niagara Official Plan in June 2022, and the Minister of Municipal Affairs and Housing approved the plan with modifications in November 2022. The 2022 Niagara Official Plan (“NOP”) replaces the former Regional Official Plan and applies to new development unless transition provisions provide otherwise. The NOP is a long-range land use planning document that guides and directs planning and development within the Region. It contains goals, objectives, and policies to manage and direct land use changes and considers their effects on social, economic, and natural environment elements. As seen in **Figure 4**, the subject lands are designated as ‘Rural Lands’.



Figure 4: Excerpt of Schedule F - Agricultural Land Base of the NOP

The following policies are applicable:

Subsection 4.1.8 Rural Lands as Part of the Agricultural System

Policy 4.1.8.1 *The predominant use of rural lands will continue to be agriculture, but some non-agricultural related development may be permitted subject to the policies in Sections 4.1.8 and 4.1.9.*

Policy 4.1.8.2 *Permitted uses on rural lands include:*

- management or use of resources in accordance with all other applicable provisions of this Plan;*
- limited residential development in accordance with Section 4.1.9;*
- agricultural uses, agriculture-related uses, on-farm diversified uses, normal farm practices, in accordance with this section;*
- home occupations and home industries in accordance with Local official plan and zoning by-law provisions;*
- cemeteries; and*
- other uses not described in this chapter may be permitted, subject to an amendment to this Plan.*

Policy 4.1.8.3 *The rural lands along the Lake Erie shoreline contain historic patterns of seasonal and permanent residential development. These uses and expansions thereof continue to be permitted in accordance with Local official plans and zoning bylaw provisions.*

Planning Comment: The proposed single detached dwelling is a permitted use within the Rural Lands Designation of the Region and the proposed application represents a modest expansion of the permanent residential development pattern along Lakeshore Road, which is existing and permitted in accordance with Local Official Plan and Zoning By-law.

Subsection 4.1.9 Non-Agricultural Uses on Rural Lands

Policy 4.1.9.1 *Limited non-agricultural residential development may be permitted on rural lands in accordance with the policies of this section.*

Policy 4.1.9.2 *Proposals for non-agricultural residential development on rural lands must meet the following criteria and the general consent provisions in Policy 4.1.4.2, in addition to the other requirements of this Plan, the Niagara Escarpment Plan and the Local official plan:*

- a) *maximum of three new lots (in addition to the retained lot) may be permitted on each lot in existence as of June 16, 2006;*
- b) *the minimum size of the proposed and retained lots shall each be one hectare unless it is determined through a hydrogeological study, that considers potential cumulative impacts, that a smaller size lot will adequately accommodate private water and sewage treatment facilities for long-term operation but not be less than 0.4 hectares;*
- c) *the development will be at a scale and density suitable to the physical characteristics of the site;*
- d) *soil and drainage conditions are suitable and permit the proper siting of buildings, the supply of potable water and the installation and long-term operation of an adequate means of waste disposal;*
- e) *the proposed development will be consistent with Section 3.1; and*
- f) *proposed developments must be appropriately separated and protected from:*
 - i. *incompatible land uses such as existing pits and quarries;*
 - ii. *mineral aggregate resources recognized in this Plan;*
 - iii. *livestock operations and anaerobic digesters, in accordance with the minimum distance separation formulae;*
 - iv. *existing and former solid waste sites;*
 - v. *major existing and proposed transportation facilities; and*
 - vi. *employment uses.*

Planning Comment: The subject lands are not located within a specialty crop area nor a prime agricultural area and as such, are not subject to the general consent provisions in Policy 4.1.4.2. The proposed consent application, which will facilitate non-agricultural residential development, will not exceed three new lots as only one new lot is being proposed. The lot to be severed (Parcel 1) is proposed to be 0.40 hectares, whereas the lot to be retained (Parcel 2) is proposed to be 6.27 hectares. Although the lot to be severed is less than one hectare, the Preliminary Hydrogeological Assessment Report prepared by Landtek Ltd., dated February 14, 2024, concluded that, “the estimated concentration of nitrate in the receiving groundwater at the site boundary permits the severance of a Lot with a size 0.41 hectare (4,056 m²) from a Lot of 17.2 acre”. Furthermore, a minimum distance separation (“MDS”) review has been completed and submitted as part of this consent application. Based on the review, the proposed lot creation is required to be setback approximately 81 metres away from the barn located at 11640 Lakeshore Road on the north side of Lakeshore Road. As seen in **Figure 5** below, the proposed lot creation is approximately 92.5 metres. As such, proposal complies with the MDS requirements.

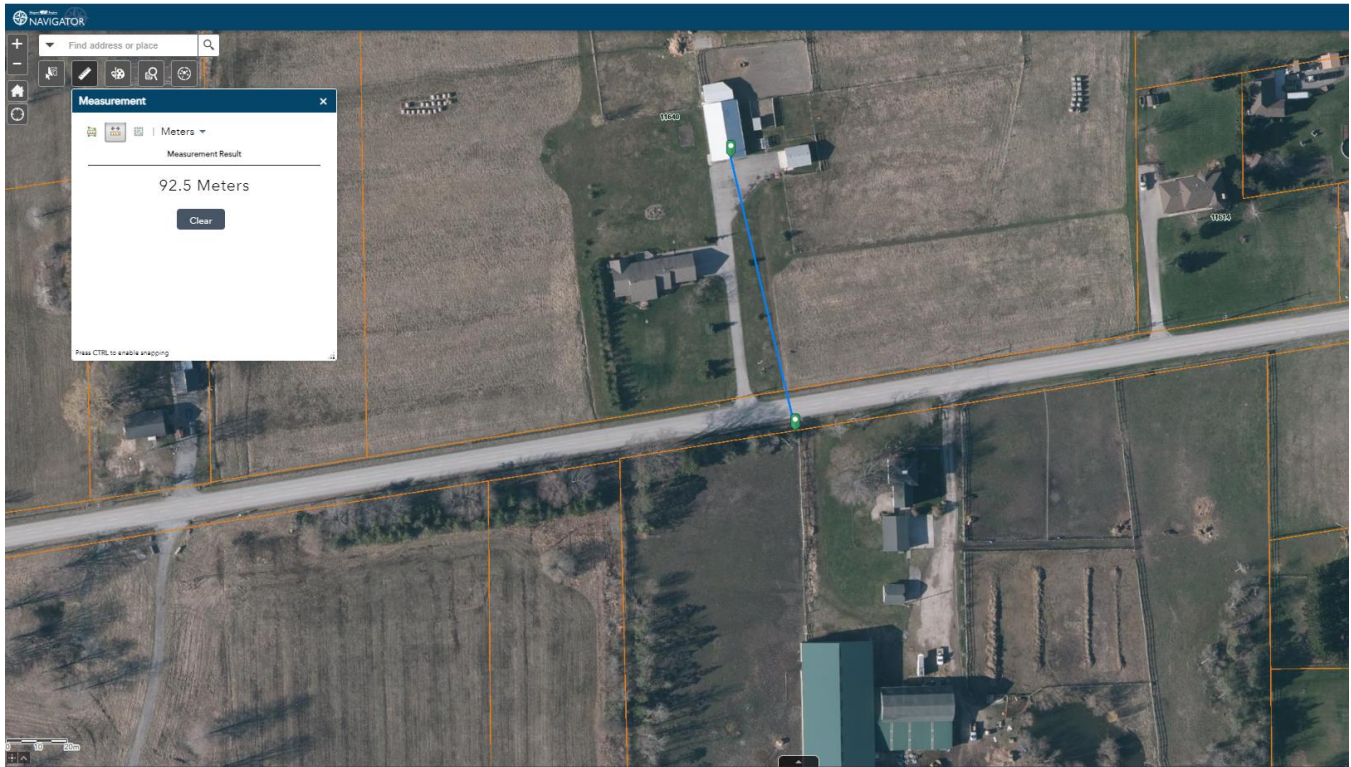


Figure 5: Setback from the barn located on the property north of Lakeshore Road, retrieved from Niagara Navigator

Subsection 6.4.2 Conservation in Accordance with Provincial Requirements

Policy 6.4.2.1 *Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved or the land has been investigated and cleared or mitigated following clearance from the Province.*

Policy 6.4.2.6 *Where a site proposed for development is located within an area of archaeological potential, the Local Area Municipality shall circulate the application and a Stage 1 Archaeological Assessment by a licensed archaeologist, as well as a Stage 2 Assessment, where required, to the Region as part of a complete application. This policy applies when any part of a development application falls within an area of archaeological potential as identified on Schedule K and will be addressed as early as possible in the planning process. For lands located*

outside a settlement area boundary where site alteration or development will not affect the entire property, the archaeologist may consult with the Province on a property-by-property basis to determine if these areas can be exempt or the assessment can be scoped.

Planning Comment: As seen in **Figure 6** below, subject lands are located within an Area of Archaeological Potential as per Schedule K - Areas of Archaeological Potential. A Stage 1-2 Archaeological Assessment was prepared by AMICK Consultants Ltd. (“AMICK”) on February 8, 2024, and was submitted to the Ontario Ministry of Citizenship and Multiculturalism. AMICK concluded that, “as a result of the Stage 2 Property Assessment of the study area, no archaeological resources were encountered.” AMICK also provided the following recommendations:

1. No further archaeological assessment of the study area is warranted.
2. The Provincial interest in archaeological resources with respect to the proposed undertaking has been addressed.
3. The proposed undertaking is clear of any archaeological concern.

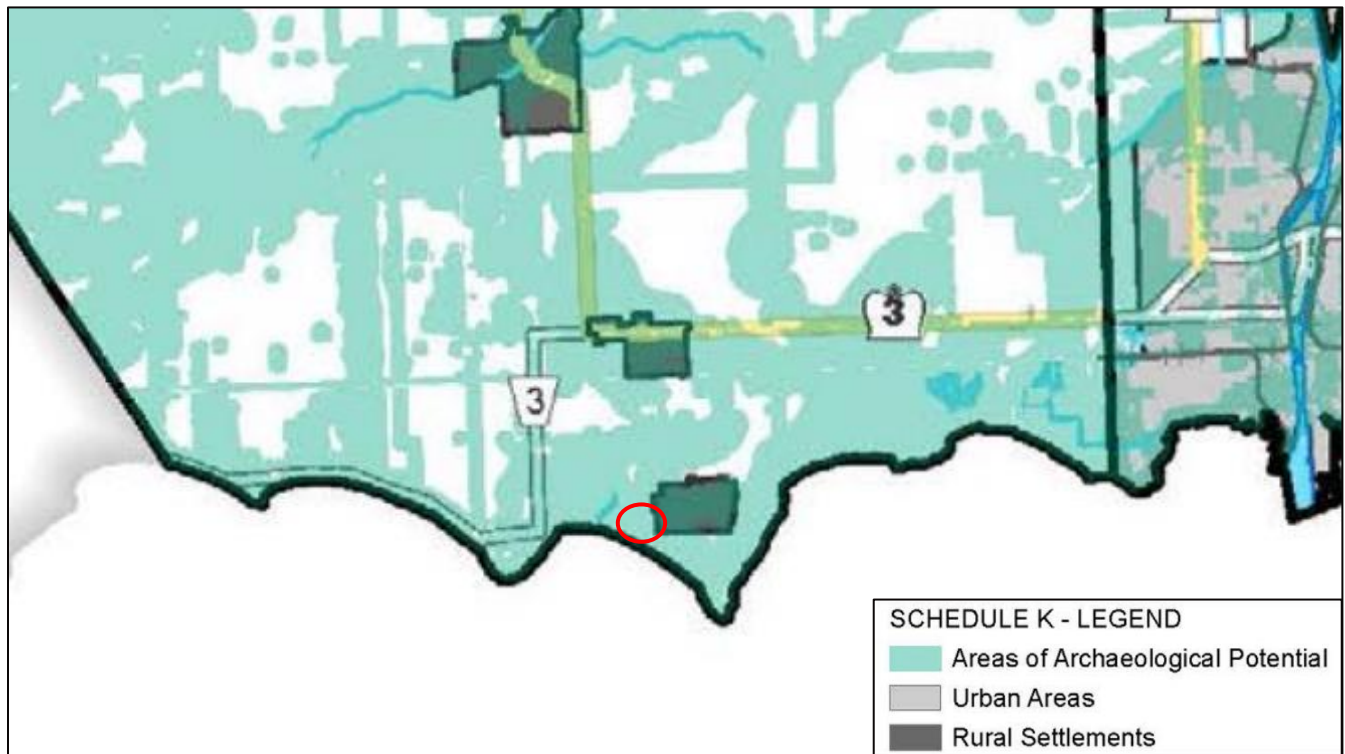


Figure 6: Excerpt of Schedule K - Areas of Archaeological Potential of the NOP

Subsection 3.1.4 Refinements to the Limits of the Natural Environment System

Policy 3.1.4.8 Where development or site alteration is proposed within or adjacent to the natural environment system, new lots shall not be created which would fragment a natural heritage feature or area, key natural heritage feature, or key hydrologic feature. The lands to be retained in the natural environment system shall remain in a natural state. The natural feature and any required buffer or vegetation protection zone shall be maintained in a single block and zoned to protect the natural features and its ecological functions. The Region encourages the Local Area Municipalities, the Conservation Authority, and other appropriate public and private conservation organizations to assume ownership of these lands.

Policy 3.1.4.9 *Applications for a lot boundary adjustment shall avoid the fragmentation of provincially significant wetlands and significant woodlands.*

Policy 3.1.4.10 *Applications for lot boundary adjustment should avoid the fragmentation of other natural heritage features and areas, key natural heritage features or key hydrologic features wherever possible and practical.*

Subsection 3.1.5.7 Development and Site Alteration in Adjacent Lands within a Provincial Natural Heritage System

Policy 3.1.5.7.1 *A proposal for new development or site alteration within 120 metres of any key natural heritage feature within a Provincial natural heritage system or any key hydrologic feature outside of settlement areas will require an environmental impact study and/or hydrological evaluation that identifies a vegetation protection zone, which:*

- a) protects the key natural heritage feature or key hydrologic feature and its functions from the impacts of the proposed change;*
- b) is established to achieve and be maintained as natural selfsustaining vegetation; and*
- c) for wetlands, seepage areas and springs, fish habitat, permanent and intermittent streams, inland lakes and significant woodlands, is no less than 30 metres measured from the outside boundary of the feature.*

Planning Comment: As seen in **Figure 7** below, the subject lands are affected by the Natural Environment System (“NES”) which consists of other wetlands, Lake Erie, and shoreline areas. Other wetlands and Lake Erie are considered Key Hydrologic Features (“KHF”) outside of settlement areas. The proposed consent application will not result in the fragmentation of the natural heritage features as the NES is located along the southern portion of the retained lands.



Figure 7: NES Mapping, retrieved from Niagara Navigator

5.5 Township of Wainfleet Official Plan, 2016

The Township of Wainfleet Official Plan, 2016 (the “OP”) sets a long-term vision for the Township, establishes goals and objectives to guide future land use changes, and sets out policies to guide future change while maintaining the desired qualities of the Township. As seen in **Figure 8**, the subject lands are designated Rural Area, Lakeshore Residential, Environmental Conservation Area, and Hazard Lands. The OP intends to preserve the Rural Area designation, which delineates lands outside Hamlets that are not considered specialty crop areas or prime agricultural areas, for agricultural uses, agricultural-related uses, and rural uses that support the rural community while minimizing potential conflicts.

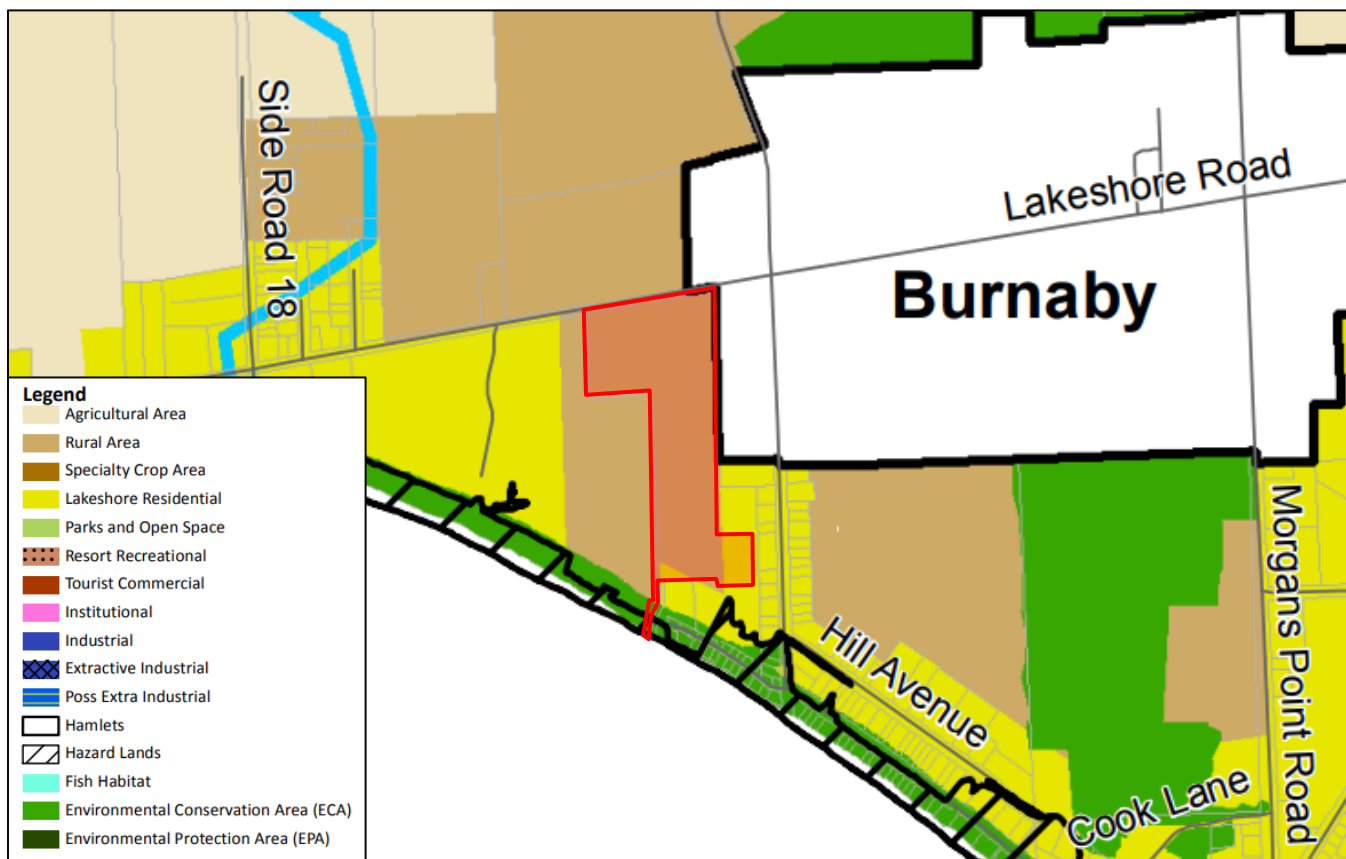


Figure 8: Excerpt of Schedule B – Land Use (Township) of the OP

Schedule / Appendix	Designation
Schedule A – Municipal Structure	<ul style="list-style-type: none"> Natural Heritage System (NHS) (Features & Linkages) Lakeshore Area Countryside
Schedule B – Land Use (Township)	<ul style="list-style-type: none"> Rural Area
Schedule B9 – Land Use (Lakeshore Area)	<ul style="list-style-type: none"> Lakeshore Residential Environmental Conservation Area (ECA) Hazard Lands

Schedule F – Mineral Aggregate Resource Areas and Natural Gas Resource Areas	<ul style="list-style-type: none"> • Bedrock Resource Areas
Appendix 1 – Significant Groundwater Recharge Areas	<ul style="list-style-type: none"> • Significant Groundwater Recharge Areas
Appendix 2 – Areas of High Aquifer Vulnerability	<ul style="list-style-type: none"> • Areas of High Aquifer Vulnerability
Appendix 3 – Niagara Peninsula Conservation Authority Regulation Area	<ul style="list-style-type: none"> • NPCA Screening

The following policies are applicable:

Section 2.5 The Lakeshore Area

Policy 2.5.4 *The minimum lot size for new lots within the Lakeshore Area shall be 1 hectare unless it is demonstrated through a hydrogeological study that a smaller lot size can adequately support a private sustainable water and sewage disposal system, and protect surface and ground water features. In such case, the minimum lot size shall be no smaller than 0.4 hectare. Proposals for new lots will also be required to demonstrate how the proposal meets the Environmental Management Policies and other relevant policies of this Plan.*

Planning Comment: As outlined above, the lot to be severed (Parcel 1) is proposed to be 0.40 hectares, whereas the lot to be retained (Parcel 2) is proposed to be 6.27 hectares. Although the lot to be severed is less than one hectare, the Preliminary Hydrogeological Assessment Report prepared by Landtek Ltd. on February 14, 2024, concluded that, “the estimated concentration of nitrate in the receiving groundwater at the site boundary permits the severance of a Lot with a size 0.41 hectare (4,056 m²) from a Lot of 17.2 acre”. As such, a smaller lot size can adequately support a private sustainable water and sewage disposal system.

Subsection 3.1 Rural and Agricultural Area

Subsection 3.1.1 General Rural and Agricultural Policies

Policy 3.1.1.1 *New land uses on existing lots, the creation of lots and new or expanding livestock facilities shall comply with the minimum distance separation formulae.*

Planning Comment: A MDS review has been completed and submitted as part of this consent application. Based on the review, the proposed lot creation is required to be setback 81 metres away from the barn located on 11640 Lakeshore Road, on the north side of Lakeshore Road. As seen in **Figure 6** above, the proposed lot creation is approximately 92.5 metres. As such, proposal complies with the MDS requirements.

Subsection 3.1.4 Rural Area Designation

Permitted Uses

Policy 3.1.4.1 *The following uses may be permitted within the Rural Area, delineated on Schedule B:*

- a) *Agricultural uses and accessory agricultural activities;*
- b) ***One single detached dwelling and secondary suite;***
- c) *Secondary uses including:*
 - i. *Home occupation,*

- ii. *Home industry,*
 - iii. *Bed and breakfasts,*
 - iv. *Help-house,*
 - v. *Garden suites;*
 - vi. *Agri-tourism uses related to agriculture, and*
 - vii. *Value added marketing uses.*
- d) *Group Homes in existence or new residential dwellings on existing lots of record;*
- e) *Agri-tourism uses un-related to agriculture, subject to Policy 3.1.4.5;* f) *Value added production uses, subject to Policy 3.1.4.5;*
- f) *Value added support uses, subject to Policy 3.1.4.5;*
- g) *Other rural uses including:*
- i. *Forestry, conservation of plants and wildlife,*
 - ii. *Nurseries,*
 - iii. *Animal kennels,*
 - iv. *Farm equipment sales and service, and*
 - v. *Existing institutional uses;*
- h) *Linear infrastructure; and*
- i) *Wells for natural gas extraction subject to Section 3.8*

General Policies

Policy 3.1.4.3 *Lot creation and consents in the Rural Area designation shall be permitted for:*

- d) *A rural residential dwelling provided:*
- i. *A maximum of three lots are created on each property in existence as of June 16, 2006;*
 - ii. *The proposed lots are designed to retain natural feature and vegetation;*
 - iii. *Each new lot shall be approximately 0.4 hectares, unless additional land area is required to support a well and a septic system, and protect surface and ground water features; and,*
 - iv. *For multiple residential development proposals of three lots the minimum lot size shall be 1 hectare unless it is determined through a hydrogeological study that a smaller lot size will adequately support private water and sewage systems and protect surface and ground water features.*

Policy 3.1.4.4 *In addition to the considerations in Section 3.1.4.3, applications for new lots or consents shall meet the following requirements:*

- i) *The new lot shall meet the minimum distance separation formulae;*

- j) *The new lot for residential purposes, as permitted by Section 3.1.4.3 must be separated from existing livestock operations by the distance determined by the minimum distance separation formulae; and*

Planning Comment: The new dwelling proposed on the retained lot is a permitted use within the Rural Area designation. The proposed consent application will not exceed three new lots as only one new lot is being proposed. The lot to be severed (Parcel 1) is proposed to be 0.40 hectares whereas the lot to be retained (Parcel 2) is proposed to be 6.27 hectares. Although the lot to be severed is less than one hectare, the Preliminary Hydrogeological Assessment Report prepared by Landtek Ltd., dated February 14, 2024, concluded that, “the estimated concentration of nitrate in the receiving groundwater at the site boundary permits the severance of a Lot with a size 0.41 hectare (4,056 m²) from a Lot of 17.2 acre”. As such, a smaller lot size can be accommodated to accommodate the private on-site services. A MDS review has also been completed and submitted as part of this consent application.

Subsection 3.2 Natural Environment

Subsection 3.2.2 Environmental Conservation Area Designation

Features Included in an Environmental Conservation Area Designation:

Policy 3.2.2.1 *Environmental Conservation Areas shall include:*

- a) *Significant woodlands;*
- b) *Significant wildlife habitat;*
- c) *Significant habitat of species of concern;*
- d) *Regionally significant Life Science Areas of Natural and Scientific Interest (ANSI);*
- e) *Other evaluated wetlands;*
- f) *Significant valleylands;*
- g) *Lake Erie shoreline; and***
- h) *Publicly owned Conservation Lands.*

Subsection 3.11 Hazard Land Area

Policy 3.11.11 *Development will generally be directed to areas outside of hazardous lands adjacent to Lake Erie, which are impacted by flooding and erosion hazards. Development and site alternation shall not be permitted within the dynamic beach hazard limit of Lake Erie. The hazard area along Lake Erie is defined by the furthest landward limit of the flooding hazard, erosion hazard, and dynamic beach hazard, as follows:*

- a) *The determination of the flooding hazard limit along the shoreline of Lake Erie shall consider:*
 - i. *The average annual high water mark,*
 - ii. *The flood allowance for wave uprush, and*
 - iii. *The flood allowance for other water related hazards such as ice piling and ice jamming;*
- b) *The erosion hazard limit shall be determined when considering:*
 - i. *The stable slope allowance, and*
 - ii. *The average annual recession, and the erosion allowance; and*

- c) *The dynamic beach hazard limit will be determined by the flooding hazard limit and an associated allowance. Development and site alternation shall not be permitted within the dynamic beach hazard limit of Lake Erie.*

Planning Comment: The subject lands are located within close proximity to Lake Erie and are impacted by its shoreline hazards and environmental features. An Environmental Impact Statement is required for development applications for all lands within 50 metres of an Environmental Conservation Area, however, the proposed lot is beyond the 50-metre buffer. As such, an Environmental Impact Statement is not required.

3.3.3 Lakeshore Residential Designation

Policy 3.3.3.2 *Residential building forms shall not exceed a height of 2 storeys.*

Policy 3.3.3.3 *All new residential development shall respect the character of the surrounding residential area in accordance with the design policies of Section 3.3.6. 3.3.3.4 To ensure new lots are located on roads of suitable condition to allow for necessary road maintenance, and ability to access with emergency vehicles, the Zoning By-law shall identify all private roads of suitable condition on which new lots could be permitted.*

Policy 3.3.3.5 *The minimum lot size shall be 1.0 hectare, unless it has been demonstrated through a hydrogeological study to the satisfaction of the Township that the necessary on-site sustainable private servicing can be accommodated on a smaller lot with no negative impacts on surface and/or ground water features.*

Policy 3.3.3.6 *The hydrogeological study referred to in Section 3.3.4.5 shall demonstrate that: Township of Wainfleet Official Plan Land Use 50 a) Soil and land area capabilities are sufficient to meet the Ministry of the Environment's Reasonable Use Guidelines; b) Ground water quantity and quality for drinking water are capable of providing potable water supply; and, c) The septic system and well are situated a safe distance from each other.*

Policy 3.3.3.7 *Where the hydrogeological study referred to in Sections 3.3.4.5 and 3.3.4.6 determines that a septic system is feasible on a smaller lot, the new lot shall be no smaller than 0.4 hectares.*

Planning Comment: The proposed consent application and future residential dwelling will respect the character of the surrounding residential area as it will not result in the change of land use. The lot to be severed (Parcel 1) is proposed to be 0.40 hectares whereas the lot to be retained (Parcel 2) is proposed to be 6.27 hectares. Although the lot to be severed is less than one hectare, the Preliminary Hydrogeological Assessment Report prepared by Landtek Ltd. on February 14, 2024, concluded that, "the estimated concentration of nitrate in the receiving groundwater at the site boundary permits the severance of a Lot with a size 0.41 hectare (4,056 m²) from a Lot of 17.2 acre". As such, a smaller lot size can be accommodated.

Furthermore, a minimum distance separation ("MDS") review has been completed and submitted as part of this consent application. Based on the review, the proposed lot creation is required to be setback 81 metres away from the barn located on the property north of Lakeshore Road. As seen in **Figure 6** above, the proposed lot creation is approximately 92.5 metres. As such, proposal complies with the MDS requirements.

SECTION 6.0 NOISE, AIR QUALITY, AND VIBRATION CONTROL

Subsection 6.6 Aircraft

Policy 6.6.5 *The aircraft traffic at Skydive Burnaby is limited and it is not feasible to establish noise contours as a guide to areas where development should be restricted. However, development of new sensitive land uses within one kilometre of Skydive Burnaby shall undertake a noise impact study to the satisfaction of the Township and Region of Niagara and up-to-date information on flight activity shall be taken into account. Based on this information,*

where deemed necessary in consultation with the Ministry of the Environment, noise attenuation measures may be required as a condition of approval.

Planning Comment: The subject lands are located near the Skydive Burnaby Airstrip which is located at 11631 Burnaby Road. Specifically, the end at Port Colborne Airport runway (i.e. which is utilized by the Skydive Burnaby Airstrip) is approximately 1 km north of the proposed residential dwelling and approximately 770 m north of the existing residential dwelling. As such, an Aircraft Noise Study was prepared by dBA Acoustical Consultants Inc. in October 2023. The purpose of the Study was to determine the noise impact and recommend necessary noise control measures for the future single detached dwelling, which is not part of the subject applications. The Study outlined noise control measures required for the proposed development which include the following:

- *Specific Window, Door, and Wall construction as recommended in Table 3;*
- *Registered Warning Clause Type “C”, (Table 3);*
- *Attic to have a minimum R16 insulation applied;*
- *It is recommended that a qualified acoustical consultant certify that the required noise control measures have been incorporated into the builder’s plans prior to issuance of a building permit; and,*
- *It is recommended that a qualified acoustical consultant certify that the required control measures have been properly installed prior to an occupancy permit.*

It should be noted that the proposed new lot which contains the existing dwelling would not be subject to the above noted requirements.

5.6 The Township of Wainfleet Zoning By-law 034-2014

The Township of Wainfleet Zoning By-law 034-2014 (the “Zoning By-law”) regulates the use of land, buildings, and structures as well as the construction and alteration of buildings and structures. The Zoning By-law implements the policies of the Official Plan as it is used to translate these policies into more specific permitted land uses and lays out the requirements for lot and buildings by establishing zone categories and regulations which apply to all lands in the municipality. As seen in **Figure 9** below, the subject lands are zoned Rural – A4-2 with a Hazard Overlay.



Figure 9: Excerpt of Map 25 of the Zoning By-law

As per Section 6.1 – Agriculture and Rural Zones, the following uses are permitted:

- Agricultural use;
- Intensive animal operation;
- Single detached dwelling accessory to an agricultural use;
- **Single detached dwelling as a principal use on any lot (new lots must meet M.D.S. requirements);**
- Accessory agricultural activities (permitted as an accessory use only)
- Secondary suite (permitted as an accessory use only)
- Value added production uses (permitted as an accessory use only)
- Value added marketing uses (permitted as an accessory use only)
- Home occupation (permitted as an accessory use only)
- Home industry (permitted as an accessory use only)
- Agri-tourism uses related to agriculture (permitted as an accessory use only)
- One farm help-house (one farm help-house shall be permitted per bona fide farm operation with a minimum lot area of 40 hectares)

- Bed and breakfast (permitted as an accessory use only)
- Kennel
- Conservation uses
- Greenhouse
- Group home (permitted only in an existing dwelling or in a new dwelling on existing lots of record)
- Medical marijuana facility (permitted only through a site specific zoning by-law amendment)

Table 1, as described in Section 6.2 – Lot, Building and Structure Requirements, outlines the requirements for the Rural – A4 Zone for single detached dwelling as a principal use on a lot.

Table 1: Zone provisions

Regulation	Required	Proposed: Parcel 1 to be Severed	Proposed: Parcel 2 to be Retained
Min. Lot Area	1 ha *	0.40 ha	6.27 ha
Max. Lot Coverage	7%	5%	TBD
Min. Lot Frontage	46 m	69.85 m	146.54 m
Min. Front Yard	15 m or as existing whichever is the lessor	14.53 m (existing)	TBD
Min. Exterior Side Yard	15 m or as existing whichever is the lessor	N/A	N/A
Min. Interior Side Yard	3.5 m with no attached garage 3 m with attached garage	15.66 m	TBD
Min. Rear Yard	15 m	28.71 m	TBD
Max. Height	9 m	As existing	TBD

* -- The minimum lot size shall be 1 hectare unless a hydrogeological study undertaken by an applicant demonstrates that on-site sustainable private services can be achieved on a smaller lot with no negative impacts on surface and/or ground water features, in which case the minimum lot size is 4,000 m²

TBD – Future Construction of the Single Detached Dwelling is not subject to this application.

Table 2, as described in Section 4.21 – Accessory Building, outlines the requirements for the Rural – A4 Zone for accessory buildings.

Table 2: Zone provisions

Regulation	Required	Proposed: Parcel 1 to be Severed	Proposed: Parcel 2 to be Retained
Accessory Building Prior to the Erection of Permitted Dwelling or Principal Building	No accessory building shall be erected prior to the erection of the permitted dwelling or principal building on the same lot	N/A	Does not comply – Existing accessory structure to remain on Retained lands
Max. Lot Coverage	5% for lots greater than 1 ha in size	2.2%	2.5%
Min. Setback from Front Lot Line	12 m	21.74 m	N/A
Min. Setback from Exterior Side Lot Line	12 m	N/A	N/A
Min. Setback from Interior Side Lot Line	2 m	18.67 m	14.62 m
Min. Setback from Rear Lot Line	2 m	14.40	N/A
Maximum Height	5 m	As existing	As existing

As identified in the tables above, the Zoning By-law does not permit the erection of an accessory building prior to the erection of the principal dwelling. In this specific case, the proposed Minor Variance will recognize the existing accessory structure on the Retained lands which will continue prior to the future construction of the single detached dwelling, which is not subject to this application. Within the Township of Wainfleet, there are similar such examples where an existing site-specific exception (A2-27) has been approved to permit an existing accessory building in the absence of a principal dwelling. As such, the proposed Minor Variance is not setting a precedence.

Section 45 (1) of the Planning Act permits the Committee of Adjustment to grant Minor Variances from the Zoning By-law provided that they meet what is known at the four (4) tests. The four tests are:

1. *Is the variance minor in nature?*
2. *Is the variance desirable and appropriate?*
3. *Does the variance maintain the general intent and purpose of the Official Plan? and,*
4. *Does the variance maintain the general intent and purpose of the Zoning By-law?*

The following will provide an analysis of the proposed variance against the four tests.

1. Is the variance minor in nature?

The determination of whether this variance can be considered minor is not based on a numerical value, but on the overall impact on the surrounding properties and the neighbourhood context. Given that the accessory building currently exists and is utilized as storage, there would be no adverse impacts to the surrounding properties. The future construction of the single detached dwelling is not a part of this application; hence the proposed variance would recognize existing conditions to continue as is. As such, it is our opinion that the proposed variance is minor in nature.

2. Is the variance desirable and appropriate?

The requested variance is necessary to permit existing conditions and for the accessory farm building to continue as is. The building itself is appropriate for the subject lands, given that it is an existing structure and utilized as storage. The proposed variance does not negatively impact the surrounding context.

3. Does the variance maintain the general intent and purpose of the Official Plan? and,

The intent of the applicable policies of the Official Plan is to ensure that development maintains compatibility with the surrounding land uses. The accessory building is a permitted use within the existing designation and will not result in a change in the land use as it currently exists. It is our opinion that this variance does meet the general intent and purpose of the Official Plan.

4. Does the variance maintain the general intent and purpose of the Zoning By-law?

The Zoning By-law defines accessory building or structure as, “a building or structure naturally or normally incidental to, subordinate to or exclusively devoted to a principal use or building and located on the same lot as the principal building or use”. The general purpose of the regulation to ensure that accessory building is not constructed prior to the permitted dwelling is to ensure that the accessory building remains as incidental to the dwelling.

However, in this specific case, while the accessory building currently exists incidental to an existing dwelling, the proposed Severance creates a scenario where the accessory building is no longer incidental to a principal use. A future single detached dwelling is planned for the property, and therefore the accessory structure would be incidental in the future; however, the dwelling is not the subject of this application and therefore it exists temporarily as a primary structure until the dwelling is built. It is our opinion that the proposed variance meets the general intent and purpose of the Zoning By-law given that the accessory structure will be incidental to a primary dwelling in the future and the variance reflects a short-term scenario.

6.0 Niagara Peninsula Conservation Authority

As seen in **Figure 10**, the south portion of the subject lands are within the NPCA approximate regulation lands due to the flood and erosion hazards associated with Lake Erie. The following policies are applicable:

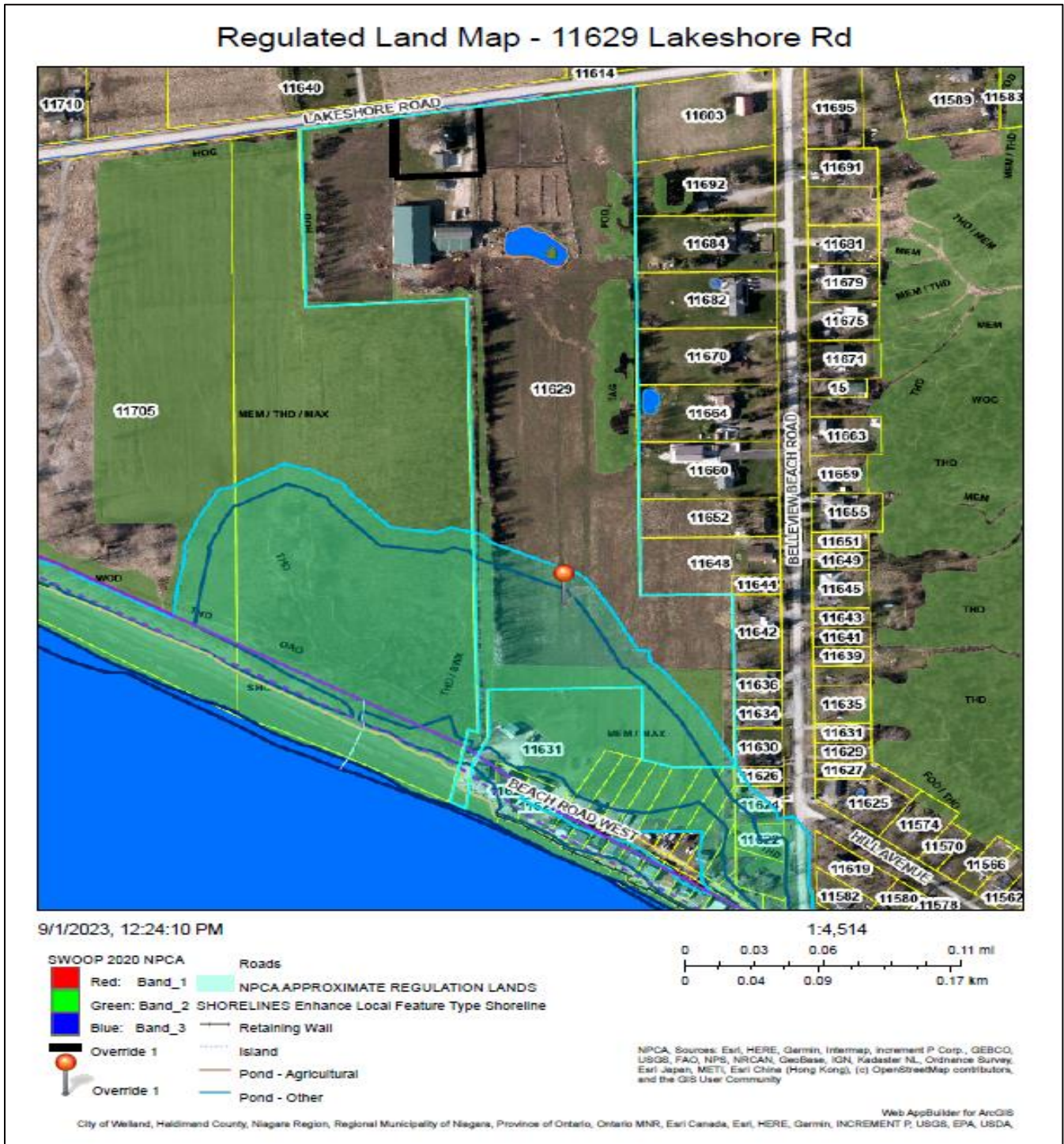


Figure 10: NPCA Mapping

Part C: NPCA Permitting & Administration of Ontario Regulation 155/06

Section 4.0 Great Lakes and Niagara River Shoreline Hazard

Section 4.2 Policies for Great Lakes Shoreline Hazards

Subsection 4.2.1 Objectives

The objectives for the shoreline hazard policies are to:

- a) Prevent loss of life and minimize potential for property damage and social disruption;*
- b) Reduce the potential for incurring public costs associated with the impacts of shoreline hazards;*
- c) Manage existing risks and reduce the potential for future risks;*
- d) Promote the conservation of land and a co-ordinated approach to the management of the shoreline; and,*
- e) Reduce the potential for adverse impacts, including pollution, on the ecological function of shorelines.*

Subsection 4.2.2 Development within the Shoreline Hazard

Development and site alteration within the Great Lakes and Niagara River regulated area shall not be permitted except in accordance with the policies of this Chapter.

Subsection 4.2.3 New Buildings and Structures

Subsection 4.2.3.1 New Habitable Buildings and Ground Floor Additions

New buildings and structures:

- a) Are subject to the buffer requirements of Policy 4.2.9.*
- b) Are not permitted within the stable slope allowance or the dynamic beach hazard.*
- c) May be permitted within the flooding hazard provided:*
 - i. Means are provided to mitigate the wave uprush hazard (i.e., shutters installed on windows).*
 - ii. Means are provided to mitigate the 100 year flood hazard (i.e. no openings are constructed within the structure below the regulatory 100 year flood elevation and safe access/egress is provided).*
 - iii. The NPCA is satisfied that no practical alternative exists to locate the proposed building or structure outside of the flooding hazard.*
- d) May be permitted within the erosion allowance provided:*
 - i. There is an appropriate level of shore protection in place and the shore protection is in good repair for the site conditions.*
 - ii. There is a minimum 5 m wide maintenance access provided.*
 - iii. A setback from the stable slope allowance of 7.5 metres is provided. Notwithstanding this, the 7.5 metre requirement may be reduced subject to a geotechnical study.*
 - iv. The NPCA is satisfied that there is no reasonable alternative location outside of the erosion hazard and that the building or structure is being placed in a low risk location.*

NPCA Conclusion: As a result of the proposed severance, a portion of the retained lot would be impacted by the flood and erosion hazards from Lake Erie. Although the NPCA does not generally permit development and site alteration within the Great Lakes and Niagara River regulated area, there are exceptions. Policy 4.2.3.1 c) iii) outlines that new dwellings may be developed if it can be demonstrated that there are no practical alternative locations for the proposed dwelling outside of the flooding hazard. While the new dwelling is not part of the subject applications, it is proposed to be developed approximately at least 150 m from the limits of the flood hazard. Therefore, there would be sufficient buffering between the new dwelling and the flood hazard.

7.0 Conclusion and Recommendations

The proposed development conforms to, is consistent with, and/or maintains the intent and purpose of the applicable planning policy and legislative documents and is compatible with the existing neighbourhood. The Committee of Adjustment has power under subsection 53(12) to make decisions with respect to land division. Also, under subsection 45(1) the Committee of Adjustment has the powers to make decisions with respect to minor variances to the Zoning By-law. In doing so, the Committee must find the proposed development represents good planning principles and does not introduce any adverse impacts, through the application of the four tests. It is our opinion that the proposed development conforms to all of these requirements and the applications should be approved.

Sincerely,
Arcadis Professional Services (Canada) Inc.



Ritee Haider MCIP RPP
Planner



Isabelle Ilagan
Planner