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O 900097
O 900098
R 900102

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

IN THE MATTER OF Section 17(11) of
the Planning Act, 1983

AND IN THE MATTER OF a referral to
this Board by the Honourable John
Sweeney, Minister of Municipal
Affairs, on a request by the
Preservation of Agricultural Lands
Society for consideration of Proposed
Amendment No. 15 to the Official Plan
for the Town of Pelham
Minister's File No. 26-OP-3875-015
OMB File No. O 900097

IN THE MATTER OF Section 17(11) of
the Planning Act, 1983

AND IN THE MATTER OF a referral to
this Board by the Honourable John
Sweeney, Minister of Municipal
Affairs, on a request by the
Preservation of Agricultural Lands
Society for consideration of Proposed
Amendment No. 36 to the Regional
Niagara Policy Plan
Minister's File No. 26-OP-0034-036
OMB File No. O 900098

IN THE MATTER OF Section 34(18) of
the Planning Act, 1983

AND IN THE MATTER of appeals by
Fonthill Mini-Farms Incorporated and
the Preservation of Agricultural
Lands Society against Zoning By-law
1304 (1989) of the Corporation of the
Town of Pelham
OMB File No. R 900102

C O U N S E L :

P. H. Kratzmann	- for the Fonthill Congregation of Jehovah's Witnesses
D. M. McFarlane	- for the Town of Pelham
J. J. Burns	- for the Regional Municipality of Niagara

MEMORANDUM OF ORAL DECISION delivered by M. A. ROSENBERG
on March 14, 1991 AND ORDER OF THE BOARD

The Fonthill Congregation of Jehovah's Witnesses wish to build
a church on 1.33 acres of land located on the east side of Rice Road,

2. A church use on the lands is contrary to both the Regional Official Plan and the Pelham Official Plan.
3. No need has been established by the church for this site.
4. Alternative sites have not been adequately considered.

The Board notes that the site is actually 1.24 acres in size because part of the original severance would have to be taken off for a road widening allowance on Rice Road.

Mr. John Howe is a retired minister of the Jehovah's Witnesses Congregation and he gave evidence before the Board in support of the application. Mr. Howe said the present Kingdom Hall Jehovah's Witnesses church is located on a small site on the north side of Port Robinson Road between Station Street and South Pelham Road in Fonthill. This site contains a 3,500 square foot first floor and basement area that can only accommodate an estimated 120 people. The washrooms are located downstairs and there is no access for the handicapped. There is only on-site parking for three or four motor vehicles and parking for the congregation is chaotic. The church members now park on the right-of-way on Port Robinson Road or on the school property across the street which is located on the south side of Port Robinson Road. This is a very dangerous situation for the senior members and children of the congregation who wish to cross the street. There are apparently many speeding cars on Port Robinson Street.

Mr. Howe said in 1986 the congregation acquired an extra lot beside the existing church site but it has never been used. He said on the average 150 to 160 people attend a service and 40 or 50 cars have to park in the area. He said a 150 member church is an ideal size and once this maximum congregation has been obtained, the

Pelham. He said after the severance was granted in 1988, the congregation gave up looking for any alternative site. He said the proposed site was the only site suitable for church purposes. What was proposed was a large building one-storey high with wheelchair access, ample parking and close to major roads.

Mr. Scott Oliver is a Land Use Specialist with the Ministry of Agriculture and Food. Mr. Oliver gave evidence before the Board and said that originally the Ministry of Agriculture and Food was opposed to the application. But today the Ministry took a neutral position and didn't object to the application. He said the 8 or 9 acre site contains a residence and an unused apple orchard in poor condition. He said a soil mapping of the area shows the subject lands as Tavestock red soils and Class 2E soils which is good for general field crops. He said the Niagara Region is a specialty crop area.

Mr. Oliver looked at two items: 1) compatibility, and 2) suitability. He said the lands are suitable for growing soy beans, white beans, spring canola, winter rape seed, tree fruits, grapes and small fruits. However, the climate of the area was not suitable for tender fruit crops. He said an apple orchard was its highest use.

Mr. Oliver looked at the question of justified need and said:

1. There was no other suitable site in the urban area of Fonthill,
2. The subject site has the least impact from an agricultural point of view; and
3. An 8 acre parcel of land is not a viable farm unit.

Drew Semple is a senior planner with the Region of Niagara. He also gave evidence before the Board in support of the application. He described the surrounding land uses as follows: 24 to 36 homes are located on Port Robinson Road to the west of the site. To the south is a nursery operation. To the west across from the site is corn production. To the north is another nursery. Further to the north is Highway 20 with a number of commercial uses.

Mr. Semple said the Town of Pelham has about 12,000 people and the Village of Fonthill is the major community in the Town. The soils of the subject lands are Class 2 soils and good agricultural land but the area around Fonthill is more suited for hardy fruits such as apples and pears, not tender fruits such as peaches, apricots and cherries. Mr. Semple said the planning staff of the Region did a report dated September 13, 1989 and looked at three areas:

- 1) agricultural capability of the site,
- 2) the need for the church, and
- 3) the availability of alternative sites.

Mr. Semple said the site is Class 2 E soils and is generally a good agricultural area. All sorts of non-farm uses exist in the area. He said this was typical of an urban shadow. He was satisfied that the existing church site was too small for the congregation and there was virtually no parking on the site. He said a 1-1.5 acre site would be appropriate for the church.

With regard to the availability of alternative sites, Mr. Semple was not satisfied with the list of the 10 alternative locations supplied by the church congregation. He said this was critical to the application and he himself looked at an additional six sites within the urban area of Fonthill. He said the regional planning

- 6) Official Plan Amendment 36 to the Region's Official Plan has a notwithstanding clause permitting a church on the 1.33 acre site in an agriculturally zoned property. Subject lands are not being redesignated Institutional in the Official Plan.

Glen Barker is a planning consultant for the Town of Pelham. He also gave evidence before the Board in support of the application. He said Rice Road and Port Robinson Road are both regional roads. He also said there is a four-way stop sign at the intersection. Mr. Barker said there was an 80 acre nursery operating to the west of the site and a 38 acre corn operation also operating to the west of the site across Rice Road. He said the existing apple orchard on the subject site is not well maintained and there is only hardy fruit production in the area, no tender fruit. He said he would describe the area as "quasi-agricultural", not a homogenous area. The area was consistent with a shadow area from the Village of Fonthill and was in transition.

He also said the Town of Pelham, in its Official Plan Amendment 15 also made an exception by allowing a church use on the property. He said this gave greater control to the town than redesignating the sites for an institutional use. He said Zoning By-law 1304 (1989) was site-specific and three matters dealing with setbacks, that had been raised in opposition would be satisfactorily addressed at the site plan control by-law stage rather than in the zoning by-law. He said the health department was satisfied with regard to the proposed septic tank system proposed for the site and the storm drainage was also adequate. He said the local Official Plan designated the site Unique Agriculture and zoned it Agriculture. A church is not a permitted use in an agriculture zone.

Mr. Barker looked at eight factors:

- 6) This may be considered infilling because of residents to the north and south of the site.

Mrs. Ana Gall is a traffic engineer with the Region of Niagara. She said the average daily traffic on Port Robinson Road is 1,950 vehicles. During peak operations the traffic volume on the road corresponds to approximately 20 percent of its carrying capacity. Mrs. Gall concluded by saying that this section of the road way is under utilized even during its highest periods of traffic flow. Mrs. Gall admitted she didn't have any information relating to traffic accidents on Port Robinson Road and that the annual increase in traffic over the last four years was around 22 percent. In addition she had no information relating to speeding vehicles on Port Robinson Road or in fact what the speed limit was on Port Robinson Road.

Three people gave evidence in opposition to the church application.

John Hasler is an environmental consultant. He gave evidence on behalf of the Preservation of Agricultural Land Society (PALS). His concerns were as follows:

- 1) In the last week before the hearing commenced he drove around for two days and found at least 30 possible alternative sites for this church. Most of these sites were in the urban boundary area of Fonthill. Some were not. His criteria was that a church could be built on a 1/2 acre or larger site. About 10 of the 30 sites had "for sale" signs on them. He said that both in 1988 and now in March, 1991, available urban sites with sewer and water services were available for a church location.

In conclusion Mr. Hasler said that the subject site was good agricultural land and should not be taken out of production. A church site could eventually be found in the urban boundary area of Fonthill where full services are available. He said the need for the site has not been justified and this is a precedent setting case.

Alec Hutchinson is a retired apple specialist who has a 25 acre farm in Pelham. Mr. Hutchinson testified before the Board in opposition to the application. He said the subject site is good agricultural land for food production and should not be used for urban expansion. Mr. Hutchinson said the climatic conditions around Fonthill are very favourable for the growing of apples, corn and tomatoes. He said that although there are some dead apple trees on the site due to neglect, there is good air circulation and good soil drainage.

In addition he made the following comments:

- 1) There is no higher use of land than agriculture.
- 2) If we destroy the soil the soil destroys us.
- 3) We must not squander our existing farm land.
- 4) Top soil is a precious resource.
- 5) Less than nine percent of Canada's land area is capable of being cultivated. Only half is actually cropped.
- 6) Between 1961 and 1976 Canada lost more than 3.5 million acres of farm land. In the last 15 years further losses have occurred.
- 7) Farm land loss is a serious, ongoing problem in all regions of the country.
- 8) A major commitment by all levels of government is needed to actively conserve soil.

to 40 alternative sites have been considered by both sides. None have been acceptable for various reasons. The proposed site is 1.33 acres in size and contains only about one dozen apple trees half of which are in poor, neglected condition. A 1 acre severance has already been taken from the northerly portion of the site and the Board finds that there is a mixture of surrounding residential and agricultural uses in the area.

The Board also finds that the area is somewhat in transition and that this is a quasi-agricultural area. As well the Board finds that a 9 acre apple orchard is a questionable viable farm unit by itself. The Board also finds that Section 3.12 to Section 3.14 of the Food Land Guidelines that the Board must have regard to has been adequately addressed and that the four issues in Section 3.14 of the Food Land Guidelines have been thoroughly and satisfactorily met.

There is no doubt that the proposed subject site contains Class 2E soils and is good agricultural land. The Board has some very strong reservations with regard to taking good farm land out of production but the Board finds, in this case, that the application is both unique and unusual and that a precedent is not being set. The proposed site has the least impact from an agricultural point of view. The Board is satisfied that the critical issue of an alternative site in the urban area of Fonthill was thoroughly examined over a 2 1/2 year period. Even today there is no other satisfactory site available in the urban area of Fonthill. As previously mentioned, at least 16 sites were thoroughly canvassed. In addition, both the Official Plan amendments only allow for an exception rather than designating the site for institutional use. This gives more control to the Town of Pelham and the Region of Niagara. The site can only be developed for a church with certain restrictions set out in Zoning By-law 1304 (1989).