

DB #	96	FOLIO #	382
ORDER ISSUE DATE			
MAY 27 1993			
OB #	1993-4	FOLIO #	41

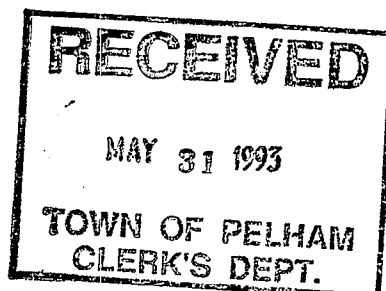


Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

*Original - needs
to be filed under
By-law section*



IN THE MATTER OF Section 22(1) of
the Planning Act, 1983

AND IN THE MATTER OF a referral to
this Board by the Honourable
Minister of Municipal Affairs, on a
request by Landco Developments Ltd.
for consideration of a proposed
amendment to the Official Plan for
the Town of Pelham to redesignate
the lands comprised of Part of
Lot 3, Concession 10, from Good
General Agricultural to Urban
Residential

O.M.B. File No. O 920137

AND IN THE MATTER OF a referral to
this Board by the Honourable
Minister of Municipal Affairs on a
request by Landco Developments Ltd.
for consideration of a proposed
amendment to the Regional Niagara
Policy Plan to redesignate the lands
comprised of Part of Lot 3,
Concession 10, from Agricultural to
Urban Residential

Minister's File No. 26-OP-3875-A03

O.M.B. File No. O 920138

- and -

IN THE MATTER OF Section 34(11) of
the Planning Act, 1983

AND IN THE MATTER OF an appeal to
this Board by Landco Developments
Ltd. for an order amending
By-law 279 of the Town of Pelham, to
rezone lands comprised of Part of
Lot 3, Concession 10, from
Agriculture "A" to Residential 2,
Residential Multiple 1 and 2 and
Open Space, to permit a residential
development

Minister's File No. 26-OP-0034-A06

O.M.B. File No. Z 910016

- and -

IN THE MATTER OF Section 50(15) of
the Planning Act, 1990

AND IN THE MATTER OF a referral by
the Honourable Minister of Municipal
Affairs on a request by Landco
Developments Ltd. for consideration
of a proposed Plan of Subdivision on
lands comprising Part of Lot 3,
Concession 10, in the Town of Pelham
Region's File No. 26T-92020

O.M.B. File No. S 930051

The Board was advised that all of the parties worked together to resolve all of the contentious issues except the two mentioned above. They came to the Board well focused and no extraneous or irrelevant evidence was tendered. The Board commends the developer and the residents for working so well together to resolve their differences amicably.

The plan of subdivision provides for a range of residential densities from single-family to block and on-street townhouses. In addition, the lot sizes are not excessive but efficient. The Ministry of Agriculture and Food, the Ministry of Natural Resources, as well as all other agencies, support the approval of all of the documents before the Board.

The Board indicated at the conclusion of argument that it does not take lightly the extension of the urban area boundary into the good quality agricultural lands of the Region of Niagara. However, in this instance, the proposal is to square off an irregular boundary and does not include any tender fruit soils. Notwithstanding the fact that the lands are still high quality agricultural lands, the priority here is the preservation of tender fruit soils. The Board is persuaded on the density of the proposed draft plan of subdivision and zoning by-law to permit the expansion of the urban area boundaries. Such boundaries should be expanded only when it can be demonstrated that there is a need for urban expansion and that urban expansion will be in a form and density which reflects an economy and efficiency in the utilization of valuable agricultural land.

Therefore, the Board, satisfied with the planning evidence of Messrs Dakin, Landry and Barber, all professional land use planners, will make the amendment to the Region of Niagara's Policy Plan, filed as Exhibit 3. Likewise, it will make the amendment to the Town of Pelham's Official Plan, filed as Exhibit 4 and attached hereto as

Plan 59M-147 (Exhibit 17) which laid out their neighbourhood and upon which they made their decision to purchase, laid out and dedicated Edward Avenue in such a manner that it terminated as a cul-de-sac with Block 73, the Park and Block 69, the townhouses gaining access by its southernmost extremity. There was no indication and no possible way to imagine that Edward Avenue would be extended through these two Blocks to provide vehicular access to a new subdivision. In addition, the urban area boundary ended at the southerly limit of Registered Plan 59M-147.

The developer takes a neutral position. Even though its planning consultant and traffic engineering consultant advise that their preference is to provide two road accesses, one from Edward Avenue and the other west off Haist Road, it is content to have the Board approve the plan of subdivision either with Edward Avenue extended with full road access, as shown on Exhibit 8, or to maintain Edward Avenue as a cul-de-sac in Registered Plan 59M-147 but provide an emergency vehicular access and pedestrian link to connect the two subdivisions. Landco retains ownership of Block 69 and has the ability of providing either scenario.

The draft plan of subdivision will contain 116 units when fully developed. The estimated traffic generated by the plan expected to use the Edward Avenue extension is low. The Board does not in any way doubt the traffic analysis conducted by Mr. Gilchrist.

The evidence of Fire Chief William Watson was compelling. His credentials and qualifications are impeccable. Pelham is most fortunate to have someone with his abilities to head its volunteer fire department. In the interest of public safety and life saving, two full street accesses are desirable. In his opinion, an emergency access should only be used when there "is absolutely no other choice". In this instance, there is a choice. Chief Watson is

difficulty in treating a significant amendment to a recently registered plan of subdivision so indifferently thereby not granting some degree of certainty to those who relied on it. A plan of subdivision is registered as the detailed end product of the planning process. Such process is rigorous and the scrutiny provided by Section 50(4) of the Planning Act should provide certainty and assurance that the plan, as registered, can be developed as laid out and surveyed. The Planning Act imposes subdivision control and the Registered Plan is a legal instrument to transact a conveyance.

The Planning Act provides definite and specific procedures to amend Official Plans and zoning by-laws. Thereby, change is inherent by those provisions. No such provisions are found in Section 50. To change a portion of a registered plan of subdivision a new application must be filed with the approval authority and the same scrutiny provided and a new plan registered on title for all prospective purchasers to gain notice. No such application was ever filed.

The integrity of a registered plan of subdivision must be maintained unless some overwhelming situation arises which was not foreseen at the time of approval. In that event the municipality can deem the plan not to be a registered plan of subdivision for the purposes of subdivision control. This has not been done nor would such action be appropriate or fruitful here.

In addition, a review of this Board's decision under File S 870007 which granted approval to the Daimler Woods subdivision provides no indication that the extension of Edward Avenue, as proposed here, was even discussed before the Board or put to that panel as an optional design. The same developer owned the lands to the south and the municipality is supportive of the extension of the subdivision. Surely it was incumbent at that point to provide for

connection between Edward Avenue on Registered Plan 59M-147 and the subject subdivision.

- 2) That Condition 10, found at p.15, Tab C-3 of Exhibit 5 be amended by the addition of the words "and sediment and erosion plan" in the third line immediately following "drainage plans".
- 3) Conditions 1-19 and the "Clearance" requirements, as consented to by the developer and endorsed by the Region of Niagara, as amended herein, all found at pgs. 14, 15 and 16, Tab C-3 of Exhibit 5.
- 4) That the developer's agreement with the Town shall provide for the installation of a suitable emergency access to link Edward Avenue through Block 69, Registered Plan 59M-147, to the subject plan. The design of such will be in consultation with the Fire Chief for the Town of Pelham. Such agreement shall provide that the emergency access be installed prior to any occupancy of the units in the plan of subdivision.

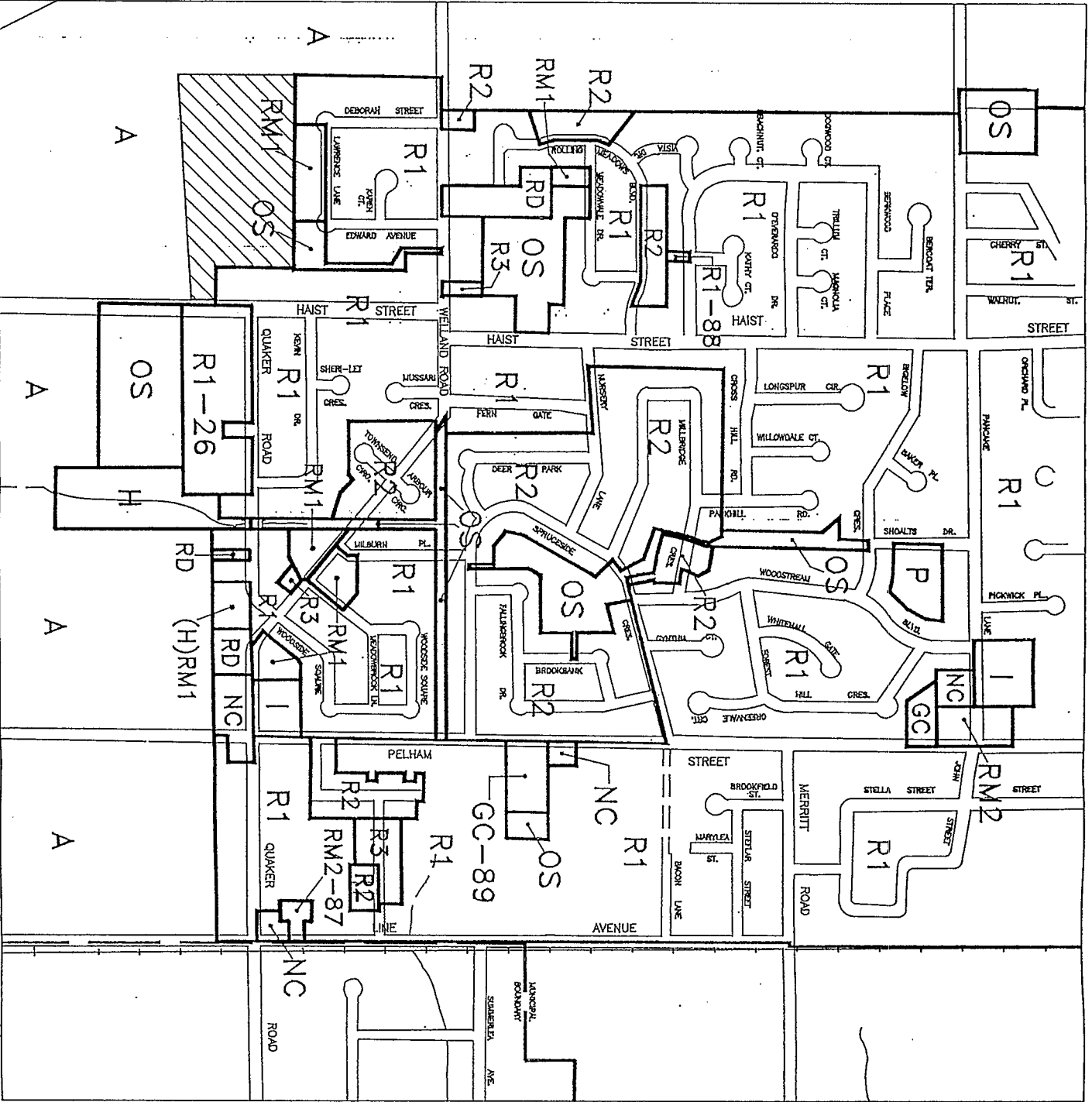
The Board approves the draft plan of subdivision, subject to the conditions attached hereto as Schedule "C", as amended herein.

DATED at TORONTO this 27th day of May, 1993.

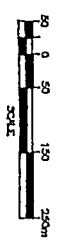
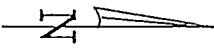


D. L. SANTO
VICE-CHAIR

SCHEDULE 'A'



SUBJECT SITE





O 920137
O 920138
Z 910016
S 930051

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SCHEDULE "A"

AMENDMENT NO. ____

TO

THE OFFICIAL PLAN

OF

THE TOWN OF PELHAM

TABLE OF CONTENTS

PART A - PREAMBLE

Introduction to the Official Plan Amendment.

- i) Purpose
- ii) Location
- iii) Basis

PART B - THE AMENDMENT

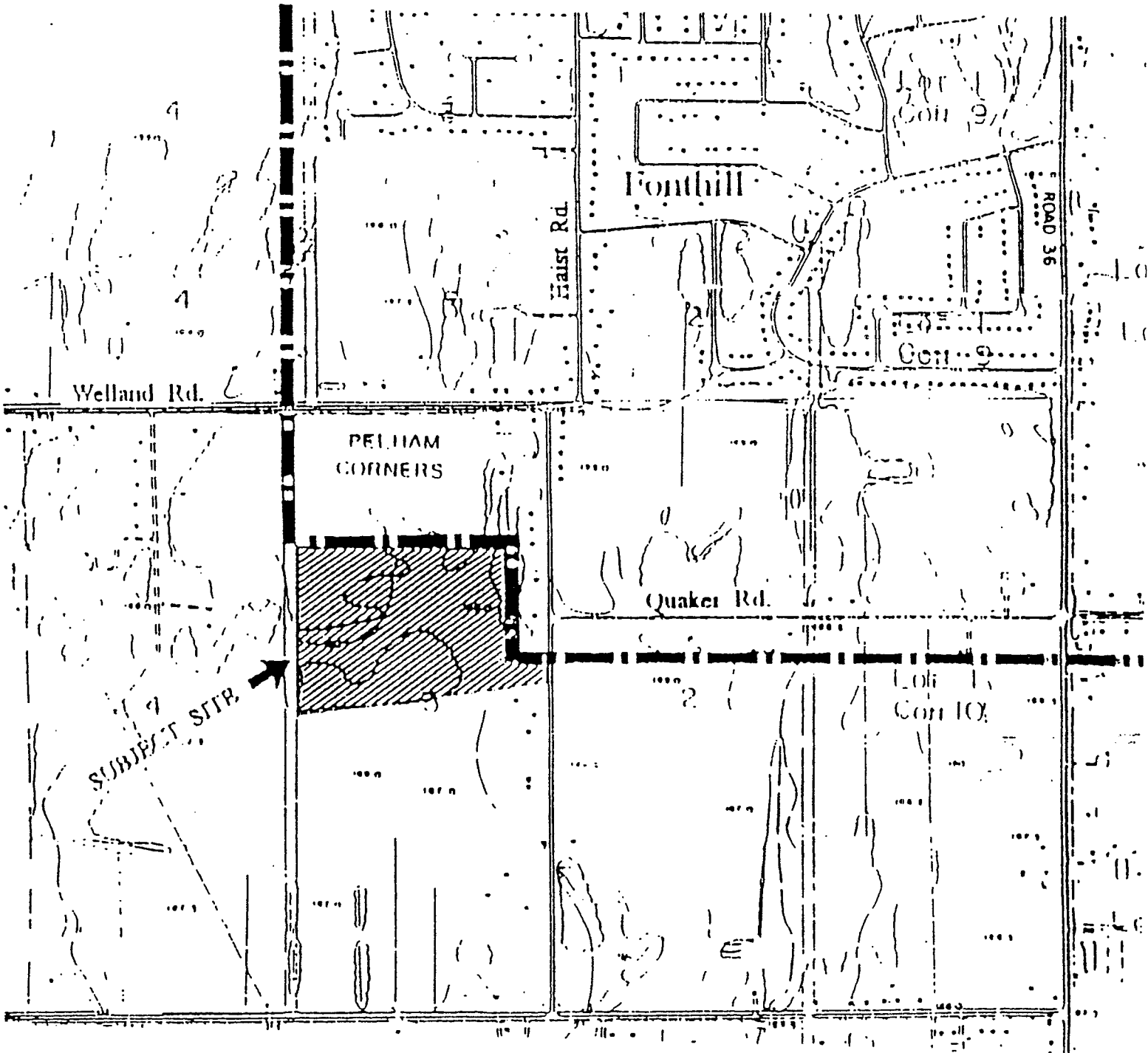
The Amendment which will be incorporated into the Town of Pelham Official Plan.

NOTE:

Part A is an explanatory section providing information regarding the Amendment and does not form a part of the body of the Official Plan Amendment. Only part B constitutes the actual Amendment to the Official Plan of the Town of Pelham.

O 920137
O 920138
Z 910016
S 930051

SCHEDULE A
Urban Boundary Expansion
South West Corner of Fonthill
Town of Pelham



LEGEND

■ URBAN AREA BOUNDARY
Change to "Urban"
"Residential" from
"Agricultural"





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O 920137
O 920138
Z 910016
S 930051

SCHEDULE "B"

THE CORPORATION OF THE
TOWN OF PELHAM

BY-LAW NO. (1993)

Being a by-law to amend Zoning By-law No.
1136 (1987), as amended.

WHEREAS Section 34 of the Planning Act, R.S.O. 1990, provides that the governing body of a municipal corporation may pass by-laws to regulate the use of lands and the character, location and use of buildings and structures;

AND WHEREAS the Planning & Development Committee of the Town of Pelham has recommended that such a by-law be enacted;

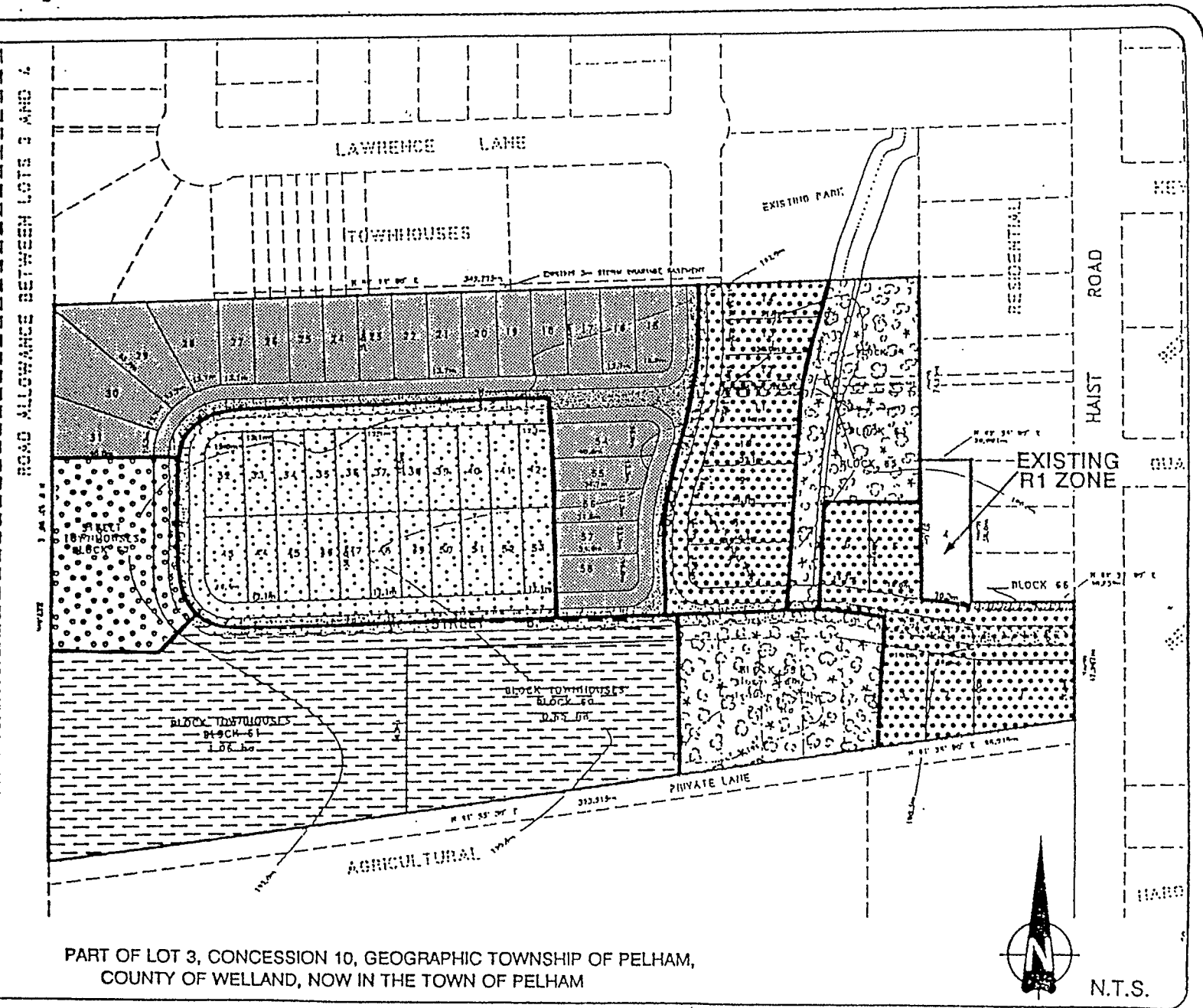
AND WHEREAS the Council of the Corporation of the Town of Pelham has deemed it to be in the public interest that such a by-law be enacted;

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

1. That the lands identified on Schedule 'A' attached hereto be and are hereby zoned as Residential 2 R2 Zone.
2. That the lands identified on Schedule 'A' attached hereto be and are hereby zoned as Residential 2 R2-115 Zone.
3. Section 30 - Exceptions of By-law No. 1136 (1987) is amended by adding thereto the following exception:

"R2-115 Nothing shall prevent the use of lands indicated as R2-115 on Schedule 'A' of this by-law for Residential 2 (R2) uses, except that the maximum lot coverage shall be 45% and the minimum interior side yard for a dwelling two storeys in height shall be: 1.8m on one side and 3m on the other side where there is no carport or garage attached, or 1.8m on both sides where a carport or garage is attached."
4. That the lands identified on Schedule 'A' attached hereto be and are hereby zoned as Residential 2 R2-116 Zone.

O 920137
O 920138
Z 910016
S 930051



TOWN OF PELHAM

- LANDS BEING REZONED FROM AGRICULTURAL 'A' ZONE TO RESIDENTIAL 2 R2-ZONE
- LANDS BEING REZONED FROM AGRICULTURAL 'A' ZONE TO RESIDENTIAL 2 R2-115 ZONE
- LANDS BEING REZONED FROM AGRICULTURAL 'A' ZONE TO RESIDENTIAL 2 R2-116 ZONE
- LANDS BEING REZONED FROM AGRICULTURAL 'A' ZONE TO RESIDENTIAL MULTIPLE 1 RM1 ZONE
- LANDS BEING REZONED FROM AGRICULTURAL 'A' ZONE TO RESIDENTIAL MULTIPLE 1 RM1-117 ZONE
- LANDS BEING REZONED FROM AGRICULTURAL 'A' ZONE TO OPEN SPACE OS ZONE

THIS IS SCHEDULE A TO BY-LAW NO. _____
PASSED THIS _____ DAY OF _____, 1993.

MAYOR _____

CLERK _____



Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

SCHEDULE "C"

The conditions for final approval and registration of the Daimler Woods Extension plan of subdivision, Landco Developments Ltd.,
Regional File: 26T-92020, Town of Pelham are:

1. That this approval applies to the Daimler Woods Extension draft plan of subdivision, Block 71, Registered Plan 59M-147 and Part of Lot 3, Concession 10, Town of Pelham, prepared by R. S. Kirkup, O.L.S. dated March 3, 1993 as subsequently revised by the Town of Pelham showing 58 detached residential lots, Blocks 60 and 61 for cluster townhouse units with a combined total of 50 units, Block 62 for street townhouse units, Blocks 59, 63 and 65 for stormwater management and related purposes, Block 66 for conveyance purposes to the abutting lot and Block 64 for walkway purposes,
2. That the road allowances as shown on the draft plan be dedicated to the Town of Pelham as public highway.
3. That the proposed streets be named to the satisfaction of the Town of Pelham.
4. That all easements as may be required for utilities, servicing, drainage channels and storm drainage purposes be granted to the appropriate authority.
5. That a cash payment in lieu of parkland dedication be provided pursuant to the provisions of the Planning Act.
6. That Blocks 59, 63, 64 and 65 be dedicated to the Town of Pelham for stormwater management, walkway and related purposes.
7. That the developer be responsible for the payment of development charges in accordance with the Town of Pelham's Development Charges By-law.
8. That the owner makes application for an appropriate Zoning By-law amendment to the satisfaction of the Town of Pelham and that the Region subsequently be advised by the municipality that the lands within the draft plan area are zoned in accordance with their intended use.
9. That prior to registration of the final plan of subdivision or any site grading or construction, a tree inventory and tree conservation plan be prepared and submitted to the Town of Pelham for approval. The plans are to be prepared by a professional Landscape Architect (OALA member) and are to include specifications for additional plantings of indigenous tree and shrub species including but not limited to street trees and planting to enhance the environmental quality of Blocks 63 and 65.
10. That prior to registration of the final plan of subdivision or any site grading or construction, a storm water management report, lot grading and drainage plans and any required creek alteration plans be prepared and submitted for the approval of the Town of Pelham, the Ministry of Natural Resources, the Ministry of the Environment and Energy and the Niagara Peninsula Conservation Authority. The stormwater management report and plans are to include an assessment of the hydrologic function of the site with respect to Draper's Creek and the means whereby storm water quantity and quality controls will be implemented.