

ISSUE DATE :

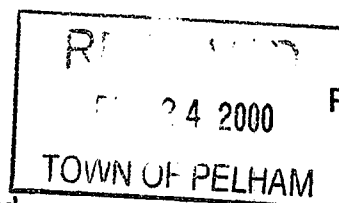
**Feb. 21, 2000**

DECISION/ORDER NO:

**0238**



Ontario



PL980963

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

Preservation of Agricultural Lands Society has appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the decision of the Ministry of Municipal Affairs and Housing to approve Proposed Amendment No. 112 to the Official Plan for the Regional Municipality of Niagara

MMAH File Number: 26-OP-0034-112

OMB File Number: O980211

Mori Nurseries Ltd. has appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the decision of the Ministry of Municipal Affairs and Housing to approve Proposed Amendment No. 112 to the Official Plan for the Regional Municipality of Niagara

MMAH File Number: 26-OP-0034-112

OMB File Number: O980215

W. R. Wilson and L. D. Smith have appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the decision of the Ministry of Municipal Affairs and Housing to approve Proposed Amendment No. 112 to the Official Plan for the Regional Municipality of Niagara

MMAH File Number: 26-OP-0034-112

OMB File Number: O980216

The Town of Pelham has appealed to the Ontario Municipal Board under subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the decision of the Regional Municipality of Niagara to approve Proposed Official Plan Amendment No. 30 to the Official Plan for the Town of Pelham

OMB File Number: O990170

At the request of Oscar Weiland and Janet Weiland, the Ministry of Municipal Affairs and Housing has referred to the Ontario Municipal Board under subsection 22(1) of the *Planning Act*, R.S.O. 1990, c.P.13, Council's refusal to enact a proposed amendment to the Regional Niagara Policy Plan to redesignate lands composed of part of Lots 2 and 3, and part of the road allowance between Lots 2 and 3, Concession 7, in the Town of Pelham, from "Good Tender Fruit Area" to "Urban Area"

Minister's File Number: 26 OP-0034-A01

OMB File Number: O950157

At the request of Oscar Weiland and Janet Weiland, the Ministry of Municipal Affairs and Housing has referred to the Ontario Municipal Board under subsection 22(1) of the *Planning Act*, R.S.O. 1990, c.P.13, Council's refusal to enact a proposed amendment to the Official Plan for the Town of Pelham, to redesignate lands composed of part of Lots 2 and 3, and part of the road allowance between Lots 2 and 3, Concession 7, from "Unique Agricultural" to "Urban Residential" to allow for the development of 86 housing units

Minister's File Number: 26 OP 3875-A05

OMB File Number: O950158

The Board conducted a Telephone Conference Call on January 24, 2000 with counsel and parties. Mr. L. Smith and Mr. W. Wilson submitted a letter dated January 12, 2000 withdrawing their appeal. The Board confirmed the withdrawal is to all matters before the Board.

The Board settled the Procedural Order, which is appended as Attachment "1".

The Board so Orders.

A handwritten signature in black ink, appearing to read "J. L. O'Brien", written in a cursive style.

J. L. O'BRIEN  
MEMBER

"M. Hubbard"

M. HUBBARD  
MEMBER



PL980963

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

**PROCEDURAL ORDER  
ATTACHMENT "1"**

Preservation of Agricultural Lands Society has appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the decision of the Ministry of Municipal Affairs and Housing to approve Proposed Amendment No. 112 to the Official Plan for the Regional Municipality of Niagara

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OMB File Number: O950157

4. The **Issues** are set out in the **Issues List** attached as **Schedule "A"**. There will be no additions or other changes to this list unless the Member(s) permit changes at the hearing. (**NOTE** that a party who asks for changes may have costs awarded against it.)
5. The **evidence** will be given in the order set out in **Schedule "B"** unless the Board and the parties agree to a different order.

#### **PROCEDURE BEFORE THE HEARING**

The Board requires certain things to be done before the hearing so that parties know what the issues are in advance. This means they will be prepared for the hearing.

#### **6. Meeting of the Expert Witnesses**

If parties intend to call expert or professional witnesses, the witnesses in the same discipline (e.g. planning, hydrology, traffic, etc.) shall meet within on February 16, 2000, 10:00 a.m., Town Hall, Town of Pelham for exchange of written evidence, and shall produce for the Board and the parties a written outline of facts and issues in agreement or in dispute. This will be filed and copies provided within ten days of the meeting, as set out below.

#### **7. List of Witnesses**

A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk of the municipality a list of the witnesses and the order in which they will be called. This list must be delivered at least ten (10) calendar days before the hearing.

#### **8. Written and Visual Evidence - Definitions**

**Written evidence** includes reports, documents, letters and witness statements which a party or public participant intends to present as evidence at the hearing. These should have pages (and also paragraphs, where possible) numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.

**Visual evidence** includes photographs, maps, videos, models, and overlays which a party or public participant intends to present as evidence at the hearing.

14. If an expert witness mentions other reports or documents in his or her witness statement, copies of these must be provided as above if the expert intends to refer to them at the hearing.
15. An expert or professional person hired by a party to give evidence may not give oral evidence at the hearing unless the expert has provided to the other parties all written evidence he or she will introduce, and has filed and delivered a witness statement. The Board can make exceptions to this but will not do so often.
16. If an expert or professional person intends to give evidence at the request of a party but without being hired by that party to do so (even though a summons may have been served, and the usual witness fee has been paid), the expert is not required to provide written evidence in advance of the hearing. **However**, the party requesting the witness must provide to all other parties within the times given above a statement of the issues which the expert will address and a brief outline of the expert's evidence on these issues.

#### **Delivery of Documents**

17. Documents may be delivered by personal delivery, facsimile or registered or certified mail, or otherwise as the Board may direct.
18. Material delivered by mail shall be deemed to have been received five (5) business days after the date of registration or certification.
19. The delivery of documents by fax shall be governed by the Board's Practice Direction 4 on this subject.

#### **Evidence by Witnesses**

20. A party who delivers written evidence must have the witness present to give oral evidence unless the party notifies the Board at least seven (7) days before the hearing that the written evidence is not part of the record.
21. A witness who will follow the witness who is testifying should be available in the hearing room in order to provide evidence immediately after that witness.
22. This will be the **order of examination of witnesses** by the parties:
  - direct examination by the party presenting the witness;

## Practice Direction 3

## EXHIBITS FOR BOARD HEARINGS

1. Maps, photographs, or other exhibits that are attached to foam core or other kinds of boards must be removable, and be folded to 8-1/2" by 11".
2. If a person uses a document in a proceeding, if it is at all practical he or she should provide copies to all parties and participants, preferably at the beginning of the proceeding.
3. Documents to be attached to Board orders must be on 8-1/2" by 11" paper.
4. Documents of more than two pages must have the pages consecutively numbered throughout, even if there are tabs or sections in the document.
5. Copies of documents kept by the clerk of the municipality do not need to be certified as authentic copies, unless another party objects that they are not authentic.
6. Those **parts** of an official plan which will be referred to in the hearing should be photocopied and distributed. However, a copy of the **entire** plan must be made available to the Board Member(s) at the beginning of the proceeding.
7. Three-dimensional models must be photographed and the photographs must be introduced with the model.
8. A videotape to be used in evidence must be viewed by the other parties before the hearing.
9. Exhibits of all types will be kept for 40 days after the Board decision is issued. After this, the person introducing the exhibit may request that it be returned. It may be returned if the other parties agree, and there are no appeals from the Board's decision. If no request is made within 90 days of the decision, the exhibit becomes the property of the Board and may be archived.

*Commentary:*

*#1 above is intended to eliminate the Board's problem of transporting large rigid boards. The purpose of #6 is to minimize the amount of paper that is filed and distributed. Official Plan documents are sometimes costly and bulky. #7 deals with models, which pose difficult storage problems for the Board. These may be valuable as evidence, but are not usually required for Board decisions or appeals. Photos are a reasonable substitute. Persons preparing models should take them away after the hearing. #8 above is to prevent surprise. #9 sets out the Board's present practice.*

October 31, 1997

D. S. Colbourne, Chair, OMB

8. Where a document is served by fax upon the Ontario Municipal Board, in addition to the requirements of #7 above, the cover page shall include the Board's Case and File Number, the type of application (e.g. zoning, subdivision, assessment, etc.), and the municipality in which the application arose.
9. A hard copy of a document which has been served by fax upon the Ontario Municipal Board or another party **shall not be sent by any other method unless requested** by the Board or another person. If requested, the copy may then be sent by regular mail.
10. A document of twelve pages or more, including the cover page, shall not be served by fax between 8:00 a.m. and 5:00 p.m., unless the person receiving the document has given prior permission. A document of more than thirty pages shall not be served by fax at any time, unless the person receiving the document has given permission in advance.

*Commentary:*

*This Practice Direction will apply to all documents served, including notices of appeal, notices of motion, notices of hearing and documents being exchanged in accordance with a procedural order.*

*The Rules of Civil Procedure for the courts permit service by fax upon solicitors only. This Board permits others to be served in this way as well.*

*The method of computing time under #5 above is set out in the Board's Rule 4.01(1)(d) for time periods under the Board's Rules (e.g. notices of motion) or in an order of the Board (e.g. notices of hearing or exchange of documents). This Practice Direction allows service by fax for notices of appeal under the various statutes giving the Board jurisdiction where the rules and applicable statutes do not provide specific rules for such procedure.*

***Note that the Board cannot extend a limitation period set out in a statute. If an appeal period ends on a certain day that is not a holiday (as set out in the Interpretation Act), an appeal must be received by the proper authority on or before that day.*** This Direction merely sets out the practice for computing time for service by fax. It is based on the assumption that a Clerk or staff **must be present to receive a fax** when a notice of appeal is being "filed with the Clerk". Other methods of service may be possible after 4:00 p.m., so the Practice Direction does not limit appeal rights governed by statute.

October 31, 1997

D.S. Colbourne, Chair, OMB



Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

**SCHEDULE "A"**

**Issues List**

**A. Preservation of Agricultural Lands Society (PALS)**

1. Are the areas in Regional Policy Plan Amendment 112 and Regional Policy Plan Amendment 118 specialty crop lands?
2. Is there a need for urban expansion in the Town of Pelham?
3. Are there alternative areas more suitable for urban expansion than the areas in Regional Policy Plan Amendment 112 and Regional Policy Plan Amendment 118?
4. What impact would urban expansion have on the mid-peninsula corridor and vice versa?
5. What are the community identification issues needed to keep the community of Fonthill self-sufficient?

**B. St. John's Centre**

1. Identification and inclusion of appropriate policies respecting stormwater and surface water flows from the proposal urban expansion areas.





Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

**SCHEDULE "B"**

**Order of Proceeding**

1. Preservation of Agricultural Lands Society
2. St. John's Centre
3. The Regional Municipality of Niagara
4. The Corporation of the Town of Pelham
5. 768841 Ontario Inc.
6. Mori Nurseries Ltd.