

ISSUE DATE:

Jul. 18, 2000

DECISION/ORDER NO:

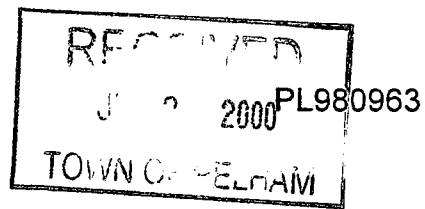
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Ontario

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 Preservation of Agricultural Land Society has appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the Regional Municipality of Niagara to Proposed Amendment No. 118 to the Official Plan for the Niagara Planning Area to permit an expansion to the Fonthill Urban Area in the Town of Pelham

OMB File Number: O000012

The Preservation of Agricultural Land 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 a decision of the Regional Municipality of Niagara to approve Proposed Amendment No. 36 to the Official Plan for the Town of Pelham to redesignate land generally defined by Regional Road 20 to the south, Lookout Street to the west, Lookout Golf Course to the north and Haist Street to the east, from agricultural to "Urban Area"

OMB File Number: O000013

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

Regional File Number: REAM 112

OMB File Number: O990170

A) BACKGROUND

Fonthill Kame (described variously as a Delta or Moraine) ("Kame") was formed thousands of years ago by retreating glacial activity. It has been a significant natural feature in Niagara for generations, and is, apparently, the highest point of land in that Region. The Kame's influence in shaping land use planning policies is still relevant at the present time, and figured prominently during this Hearing.

The community of Fonthill ("Fonthill"), which is part of the Town of Pelham ("Pelham"), has evolved on and around the Kame.

This case involves competing visions for the use of land and the contentious issue of urban expansion to accommodate future growth for Pelham. The local municipality has selected areas on or adjacent to the Kame, in Fonthill, to satisfy the expected need for land to meet the anticipated urban growth demands. That policy direction has been supported by the Regional Municipality of Niagara ("Region"), and certain land owners within the proposed expansion areas. It is opposed by the Preservation of Agricultural Lands Society ("PALS"), a not for profit group which does not own land in Pelham, but is concerned with the protection of agricultural lands in the Niagara Region.

Pelham is comprised of: North Pelham, Fenwick, Fonthill, and rural/agricultural lands, within the Region. Twelve local municipalities are constituent parts of the Region, each exercising some form of planning controls.

The matters under consideration can best be placed in context by reference to a map. Pelham and the Region have adopted Official Plan Amendments to allow urban expansion within Areas 1, 2, 3 and 4 shown on the map appended as Attachment "1" to this Decision.

Area 1, on the crown of the Kame, consists of 34 hectares located contiguous, on the west side of the existing urban part of Fonthill, bounded on the north by Regional Road No. 20, between Lookout Street and Haist Street, and is owned by Mori Nurseries Limited/Mr. O. and Mrs. J. Weiland ("Mori").

Areas 2, 3, and 4, on the lower eastern flank of the Kame, consist of 186 hectares located contiguous, on the east side of the existing urban part of Fonthill, bounded by Regional Road No. 20 to the north, Rice Road to the east, the Pelham/Welland boundary to the south, Line Avenue/Steve Bauer Trail/Station Street to the west, and are under multiple ownerships.

to LOPA 30 is appended as Attachment "4" to this Decision and depicts the areas with the corresponding land use changes.

Appeals from the refusal by the Region and Pelham to amend the Official Plans for the Mori lands in Area 1 were effectively superseded by ROPA 118 and LOPA 36.

Certain appeals involving other parties were resolved prior to the Hearing, leading to requests to amend the planning documents to implement those agreements. The Minutes of Settlement will be dealt with by the Board in the Disposition section of this Decision.

Mr. L. Smith and Mr. W. Wilson withdrew their appeals at the Prehearing Conference and did not attend the Hearing to give evidence.

The only appellant at the Hearing in opposition to the Amendments is PALS.

The Board heard evidence from the following expert witnesses in the disciplines, and on behalf of the parties, noted:

1. Planning: Mr. G. Barker (Region and Pelham),
Mr. D. May (Mori),
Mr. R. Raymond (PALS);
2. Agrology: Mr. G. Hagarty (Region and Pelham),
Mr. M. Hoffman (Mori);
3. Micro Climate: Dr. T. Gillespie (Region and Pelham)
Dr. W. Rouse (Mori),
Dr. A. Shaw (PALS);
4. Market/Demand: Mr. R. Feldgaier (Mori);
5. Viticulture: Mr. K. Ker (Mori).

- (a) Micro climate
- (b) Soil suitability and capability
- (c) Existing and permitted land uses

No agreement between parties respecting the subject lands.

2. *Is there a need for urban expansion in the Town of Pelham?*

In agreement with :

- (a) Regional Report DPD 32/96 respecting the basis for determining need on a Region wide basis.
- (b) Some of the future needs could be satisfied through infilling within the existing urban boundary 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?*

No agreement between parties respecting alternative areas.

4. *What impact would urban expansion have on the mid-peninsula transportation corridor and vice versa?*

An issue based on opinions to be argued before the Board.

5. *What are the community identification issues needed to keep the community of Fonthill self-sufficient?*

An issue based on opinions to be argued before the Board.

Supplementary agreed upon statement of fact respecting Area 1 as follows:

- (a) Area 1 is serviceable in the short term economically.
- (b) PALS has not done any engineering studies with respect to alternative areas.

The Board will deal with the Issues raised in the Analysis section of the Decision.

C) ANALYSIS

Several issues put in dispute by PALS were not buttressed by evidence of qualified experts in the relevant disciplines. Counsel for PALS relied on the cross-examination of

- Specialty Crop Land

The relative extent of specialty crops (fruit and vegetables) is not predominant on the Site, the Kame, the Municipality of Pelham, or Climate Area G. Therefore, the Subject Property and the surrounding area is not specialty crop land as defined in *Policy 2.1 [Board - Provincial Policy Statement]*.

- Specialty Crop Capability/Suitability

The site has relatively good capability/suitability for specialty crop production. However, when compared to other proposed Urban Expansion Areas using the map by Kingston and Presant (1989), the average capability for specialty crops in Area 1 is better than Area 2 and Area 4, similar to Area 5 and poorer than Area 3.

If sour cherries are the only specialty crop considered, Area 1 has a better rating than Areas 2, 4 and 5 and a similar rating to Area 3 (using Kingston and Presant).

If the more detailed maps by AgPlan and Ecological Services (1996) are used, Area 1 has the lowest average specialty crop capability.

- Common Field Crop Capability

The Site has an agricultural capability for common field crops ranging from classes 2-6. The productivity of the Urban Expansion Area No. 1 lands is relatively low or similar when compared to the other proposed Urban Expansion Areas.

The capability for common field crops of the Area 1 lands is higher or lower depending on the map or calculation method assumptions used. However, in a relative rating at a detailed scale, Area 1 has the lowest rating.

- Non-Agricultural Land Use

As outlined in other reports, Area 1 has a number of existing relatively small lots unsuitable for agricultural production, is bounded by non-agricultural or urban development to the north, south and east.

The uncontradicted, qualified, evidence of Mr. Hagarty regarding Areas 2, 3, and 4 is set out in his report (Exhibit 4 B, tab 2-5 and the Update - Exhibit 43). He examined:

- Physiography, Surficial Geology and Drainage Patterns,
- Climate,
- Soils, including C.L.I. Soil Capability, Soil Suitability for Specialty Crops, and the Nursery Operation in Area 2,
- Land Use,
- Land Tenure Analysis,
- Resource Consumption, including Soil Capability for Agriculture, Capital Investment and Farm Community,
- Conflict Issues, including Vandalism and Trespassing, and Boundary Issues, and
- the Agricultural Code of Practice.

His conclusions are (Exhibit 4 B, tab 2-5, pp. 35-36):

6. SUMMARY AND CONCLUSIONS

6.1 Summary ...

A number of conclusions were derived following analysis of the data. These conclusions are listed below.

- 1) **Urban Fringe Impact** - The Subject Lands are already significantly impacted by existing non-agricultural land use thereby reducing the agricultural priority and long term viability of this area. These impacts are characterized by a wide mix of land uses including agricultural operations, hobby farms, residential (estate, strip, and subdivisions), recreational, commercial, industrial, and institutional uses.

The area is highly fragmented by different land uses and tenure patterns. Approximately 46% of the Study Area in the Town of Pelham has been severed into lots smaller than 20 acres. A further 43% is locally owned, but the majority of these lands occur in the western portion of the Study Area.

agricultural land use, the proposed development will not adversely impact ongoing agricultural operations in the area. Conflicts due to the proposed expansion are not expected with regard to the Agricultural Code of Practice.

Mr. Hagarty concluded Areas 2, 3 and 4 are in reality more appropriately within the "Good General Agricultural" land designation of the Pelham Official Plan and are not properly designated "Unique Agriculture" land. He went further in his evidence and stated the Areas are not good tender fruit lands. In cross examination he agreed with counsel for Mori that Area 1 was not good tender fruit land.

2) Market/Demand

Mr. R. Feldgaier is a qualified market analyst. He prepared a report (Exhibit 63) to support the inclusion of the Area 1 lands within the urban boundary of Pelham. The report, by necessity, required an examination of the forecast demands within a Region, Pelham and Fonthill context. The conclusions of the review are (Exhibit 63, pp. i - iii):

EXECUTIVE SUMMARY ...

The following is a summary of the main findings of the analysis:

- Pelham's share of ground-oriented housing completions and household growth in the Pelham Market Area increased in 1991-1996.
- Pelham appeals particularly to move-up and adult lifestyle buyers.
- Demographic trends should help bolster Pelham's future share of new housing demand in the Pelham Market Area relative to 1991-1996.
- Pelham attracts a large share of its new home buyers from other municipalities.
- there is a diminishing supply of residential land for ground-oriented housing in St Catharines, and Thorold and Welland are also facing supply constraints.
- Pelham accounts for a sizeable share of larger single-detached lots in the Pelham Market Area. Pelham is expected to capture a larger share of Niagara Region new housing demand than assumed by the Region of Niagara.

- In this report, the Region distributed the projected household growth under the Medium forecast for the Region as a whole to the local municipalities. The approach is similar to that used in Report DPD 155-93. Forecast growth is first distributed based on the experienced distribution of additional households during 1985-1994. Within each municipality, growth is allocated to urban and non-urban areas. Adjustments are then made to account for any shortfalls between the practical capacities of the urban areas and projected demand as well as the potential for some of the shortfalls to be accommodated within the existing urban areas.
- Figure 2-3 [Board - appended as Attachment "6" to this Decision] shows the revised household projections for the Region (as presented in Report DPD 32-96) and for municipalities in the Pelham Market Area. Under the adjusted projection, 2,055 additional households are projected for Pelham during 1995-2016, of which 171 households are allocated to the non-urban area and 1,884 to the urban area.
- According to the forecast presented in Report DPD 32-96, Pelham would account for just over 5 percent of household growth in Niagara Region during the 1995-2016 period. Historically, Pelham's share of Regional household growth has been very volatile, declining from 8.5 percent in 1981-1986 to 3.5 percent in 1986-1991 but then recovering to 6.9 percent in 1991-1996 ...

The Board notes the parties in the 'Agreed Outline of Facts and Issues' (Exhibit 19) were "in agreement with" using Regional Report DPD 32/96 as "... the basis for determining need on a Region wide basis". Mr. Feldgaier's report assessed the future supply of land in Pelham (Exhibit 63, pp. 8 - 9):

2.3.3 Residential Needs Update - 1999

- ... the total practical housing unit capacity at the end of 1999 in Pelham was 800 units of which 446 units were in Fonthill ...
- Based on a total projected demand for Pelham ... of 106 units per year, the total practical housing capacity in Pelham at the end of 1999 represented only 7.5 years supply.
- Based on a total projected demand for Fonthill ... of 77 units per year, the total practical housing capacity in Fonthill at the end of 1999 represented only 5.8 years supply.

4) Micro Climate

Dr. A. Shaw has gathered 'state of the art' temperature data about the Kame. Dr. Rouse and Dr. Gillespie used Dr. Shaw's data, but drew significantly different conclusions from their interpolations.

Dr. Shaw's report of Areas 2, 3 and 4 set out the purpose of the study (Exhibit 38, p. 4):

The purpose of this study is to provide scientific data in order to address a number of objections raised by the members of PALS (Preservation of Agricultural Lands Society) to the micro climate assessment prepared by the Ecological Services Group in June 1996 on behalf of the Town of Pelham.

The chief objection is that the assessment does not provide sufficient convincing evidence that would lead to the following main conclusions of the study:

- i) The Subject Lands do not have the same micro climatic advantages of the Foothill Kame due to their elevation, topography, soils and micro climate;
- ii) The estimated micro climate of the Subject Lands is more severe than any of the other areas as represented at climatic stations at Fonthill/Ridgeville, St. Catharines, Vineland and Welland;
- iii) The Subject Lands are considerably riskier for specialty crops in terms of susceptibility to winter injury and damage to spring blossoms;

Another equally important objection relates to the assumptions and methodology that the authors of the report have used to reach the above conclusions:

- iv) The assumption that the Subject Lands have a micro climate more similar to that of the Haldimand Clay Plain zone (Zone 7) than the Fonthill Kame (Zone 6) because of its topography;
- v) The assumption that the minimum temperature of the Subject Lands is 1 to 2 degrees colder than that of the Welland site due to frost pockets and lack of cold air drainage;
- vi) The authors did not undertake an on-site monitoring of the Subject Lands, even over a short-term period, to provide climatic data for an accurate comparison with other areas of the Fonthill Kame, St. Catharines, Vineland and Welland.

than those of the Haldimand Clay Plain. On five occasions, the temperature of the Subject Lands was equal to or warmer than the St. Catharines Airport site.

3. Given the 2-9 percent range of slopes found within the Subject Lands, the conditions for adequate cold air drainage from the site are met provided there are no obstructions.
4. Temperature transects detected no significant difference in temperature between the Subject Lands and areas on top of the Fonthill Kame. On two occasions, the Subject Lands had temperatures which were 0.5°C warmer than areas on top of the Kame.
5. This study has found no conclusive evidence to support the assumption made by the Ecological Services Group that the Welland urban site was consistently warmer than the Subject Lands. Under radiation freeze events, nine out of fourteen occasions the Subject Lands 1 recorded warmer temperatures than the Welland urban site. On the March 8, 1999 event with potentially damaging temperature, the Subject Lands recorded temperatures equal to that of the Welland urban site and close to 3° C warmer than sites representing the Haldimand Clay Plain.
6. Based on all aspects of the field measurements undertaken, no strong evidence has been found that indicates that the Subject Lands are consistently colder than areas on top of the Fonthill Kame or share the same climatic characteristics of the Haldimand Clay Plain. The existence of tender fruit orchards on lands adjacent to the Subject Lands is indicative of their climatic potential for tender fruit production. Therefore, these lands belong to the Fonthill Kame micro climate complex and meet the climatic requirements for the production of tender fruit and cold-hardy grape varieties provided they are landscaped and appropriate management methods are adopted.

Dr. Gillespie, who provided an updated analysis for the Region and Pelham, and reviewed Dr. Shaw's data, concluded (Exhibit 36):

A. Micro climatic Comparisons of Areas 1, 2, 3 and 4

There is evidence in the data presented in Reports 1 and 2 ... (Shaw 1992 and 1999) [Board - Exhibit 79 and Exhibit 38 respectively] that a consistent micro climatic advantage cannot be seen for any one of the four

However, on the few special nights when the Kame shows its ability to create strong micro climatic differences ... Area 1 shows significantly warmer temperatures than Areas 2, 3, and 4. Therefore, I again suggest that Area 1 should be given a higher micro climatic rating than Areas 2, 3, and 4.

Dr. Shaw also assessed Area 1 (Exhibit 80):

Conclusions

- Area 1 is located on prime agricultural lands, which possess the combination of soil and climatic conditions that are suitable for tender fruit production.
- The chief limitation of the soils is the need for irrigation when precipitation amounts are below normal level.
- There are no possible impediments to the drainage of cold air on nights with potentially damaging temperatures.
- Previous and existing land uses attest to the suitability of this area to sustain temperature sensitive agriculture provided no major topographic or built features adversely affect its micro climate.

In response to Dr. Shaw's report on Area 1, Dr. Rouse, on behalf of Mori, observed (Exhibit 54):

This analysis is in response to three recent reports ... concerning the micro climate in and about the Fonthill Kame moraine.

In report 1 [Board - Exhibit 38] Dr. Shaw presented results of data collection pursued during January, February, March and April, 1999. His analysis concluded that Urban Expansion Areas (UEA) 2, 3, and 4 possessed the climate characteristics of the Fonthill Kame and thus represented an enhanced climatic environment for speciality crop production.

In report 2 [Board - Exhibit 80] Dr. Shaw commented on the claims presented by AgPlan and Rouse (1999) who claimed that UEA 1 did not represent an enhanced climatic environment. In his report he saw no impediments to cold air drainage from UEA 1 as claimed by AgPlan and Rouse although giving no evidence for this conclusion. He further stated that any problems could be overcome by thinning the forest on the steep adjacent slopes.

by Dr. Gillespie and Dr. Rouse who expect the cold days, especially in the late Fall or early Spring, could have damaging influences on tender crop production. Further, Dr. Rouse observes that other factors must be considered including precipitation, evapotranspiration, soil temperatures and snow cover to explain the "climatic environment", however he stated in evidence the data collected does not warrant further "major investigation" of the lands. The Board is left with the data collected by Dr. Shaw, his analysis, and the critiques of Dr. Gillespie and Dr. Rouse. There is sufficient doubt cast on Dr. Shaw's analysis, and ultimately his conclusions, that the Board cannot assign these lands to the Specialty Crop designation based on micro climate.

5) Planning

The Board will deal primarily with the evidence of Mr. Raymond since PALS is the sole remaining appellant in opposition to the Amendments. The Board's position on the issues raised by the Planner is more germane than a recitation of the testimony of each planning witness.

Mr. Raymond discussed the following matters in his evidence (Exhibit 90):

- micro climate and soil quality,
- agricultural land preservation,
- the need for additional residential and employment lands in Pelham,
- planning policy interpretations,
- urban fringe impacts and land use conflicts, and
- distinctive urban communities.

The opening paragraph of Mr. Raymond's report dealing with "The Issues" recites (Exhibit 90, p. 3): "The issues covered in this report are directed to the planning and agricultural matters which arise from a close inspection of the parcels of land covered by Regional Plan Amendments 112 and 118." The Board notes PALS did not lead any evidence from a qualified agrologist, nor was there any indication Mr. Raymond consulted an agrologist in forming his opinions on "agricultural matters".

6. Urban area expansion to accommodate either existing residents or new residents should not take precedence over the need to preserve specialty crop lands.
7. There is no apparent need for a Business Park in Fonthill.
8. There is not evidence to support the use of specialty crop lands for urban expansion on the grounds that land use impacts can be ameliorated or prevented in the future, or that any such impacts exist at present time.
9. Any "urban fringe" impacts which now exist on either Area are most likely the result of land speculation and will cease if the applications are refused by the OMB.
10. The "Distinctive Urban Community" policy in the Regional Policy Plan should not have precedence over Provincial and Regional initiatives to preserve specialty crop lands.

Based on "good planning" principles and the weight of the protection and preservation Policies of the Regional Policy Plan and the Provincial Policy Statement, we conclude that the applications by the Town of Pelham for approval of Regional Plan Amendments 112 and 118 should be refused.

The issue of agricultural land preservation is premised on Mr. Raymond's interpretation of Section 6 of the Regional Policy Plan (Exhibit 90, p. 4):

The proposals for urban boundary expansion put forward in Regional Plan Amendments 112 and 118 total 555 acres (224 ha) (including the Timsdale lands). The result of any approvals will be a noticeable loss of specialty crop land, specifically lands designated as Good Tender Fruit lands, in direct contravention of the objectives and policies of Section 6 of the Plan.

The Board, given the agrology and micro climate evidence, must conclude there is no contravention of Section 6 of the Plan. However, the more appropriate reference is, as Mr. Barker stated, to Section 5 of the Policy Plan which deals with urban area expansions. Policy 5.6 of the Plan does not prohibit expansions of the urban area onto lands designated "Unique Agricultural". The policies of Section 5 were followed by Pelham in assessing Areas 1, 2, 3 and 4. The Board accepts Mr. Barker's evidence Pelham's program of boundary expansion satisfied the evaluation criteria for urban expansion in Policy 5.6 of the Plan.

framework, including all pertinent policies of the *Statement*, based on the evidence presented by the Region, Pelham and Mori, consistent with the requirements of the *Planning Act*, R.S.O. 1990, c. P.13, as amended.

Mr. Raymond relied on Appendix B to the Regional Policy Plan which provided a commentary on permanent urban boundaries at the time of the establishment of boundaries in 1981 (Exhibit 90, p. 11, Appendix B to Policy Plan):

Accordingly, a basic concept underlying the policies of this Plan is that the boundaries of urban areas which abut good tender fruit and grape lands should be regarded as permanent, and that the boundaries of urban areas which abut good general agricultural lands as defined in this Plan should not be changed except for an essential purpose and provided lands of lower agricultural capability appropriate for the purpose are not available elsewhere.

He then states (Exhibit 90, p. 11):

While not a policy *per se* of the Regional Policy Plan, Appendix B does establish the principle of permanent boundaries for urban areas abutting good tender fruit and good grape lands and expansion onto good general agricultural lands for essential purposes only. Appendix B is the context for which Objective 6.1 (which provides for the preservation of Niagara's agricultural lands) was prepared; Policy 6.A.1 which gives the highest priority of preservation to good tender fruit and good grape lands; and Policy 6.A.8 (a) and (d) which states that non-agricultural uses shall not be permitted in unique agricultural areas.

The Board accepts Appendix B does not form part of the policies of the Regional Policy Plan. Appendix B does not establish the principle of permanence of the urban boundaries and is not a policy which must be applied in the consideration of the matters before the Board. As Mr. Barker noted (Exhibit 17), permanence of urban boundaries is not addressed as an objective or policy in the Regional Policy Plan. Section 5 of the Policy Plan was incorporated into the Regional Plan in 1994 and post-dates Appendix B.

Mr. Raymond discussed the issue of alternative locations on lesser quality agricultural lands, contending (Exhibit 90, p. 23):

5. Alternative locations for this amount of new residential development are available in accordance with existing Regional Policy Plan in areas such as the Port Robinson West Community in Thorold which is located in the

What makes the urban area of Fonthill distinct from other urban areas such as the City of Welland, is that it is a "village" that traditionally was as a service centre to the surrounding agricultural community and more recently has become a bedroom community. Clearly there are many opportunities available, such as redevelopment, downtown improvements and restricting urban boundaries of the Village of Fonthill that will do more to preserve Fonthill's distinct urban character rather than allowing the expansion of the urban area boundary for further urban sprawl of primarily single family housing.

The expansion of the urban area boundary onto Areas 2, 3 and 4 and Area 1 does not maintain the objective of distinct and identifiable urban community for the Village of Fonthill. The proposed urban boundary expansions will only serve to exacerbate further urban sprawl not at all keeping with the distinct urban character of the Village of Fonthill. Rather efforts should be focussed on developing policies that support the concept of a viable downtown core for the Village as opposed to the development of a business park which is more likely to contribute to economic decline of the downtown core area.

No evidence was tendered to support the assertions that other opportunities exist to accommodate the future needs of Pelham such as downtown improvements, redevelopment or that the proposed business park would contribute to the economic decline of the downtown core area. In fact, Mr. Raymond conceded in cross-examination that Pelham does not have any serviced industrial land remaining to expand business opportunities.

The most telling question put to Mr. Raymond in cross-examination by counsel for Pelham was: 'If Areas 1, 2, 3 and 4 are not "Unique Agriculture" lands would your opinions be different?'; he replied: 'I have lost my case'.

In summary, where there is a divergence of planning opinions between Mr. Raymond and his assessment of the issues, and Mr. Barker, the Board accepts and prefers the analysis of Mr. Barker, including the confirmatory evidence of Mr. May.

D) DISPOSITION OF APPEALS

Based on the evidence, and the analysis in Part C) of this Decision, the Board concludes:

objectives. The Region and Pelham have satisfied the framework set out in the *Statement* and the Policy Plan to allow the urban expansions proposed in the Amendments;

12. A thorough, comprehensive planning program was undertaken by the Region and Pelham which included, in addition to those matters reviewed in Part C) of this Decision, the following: subwatershed study, transportation review, concept plan, water distribution needs study, and sanitary sewage servicing study, all of which support the inclusion of Areas 1, 2, 3 and 4 in the urban boundary.

Based on the evidence and analysis, the Board is prepared to allow the Amendments to become fully operative under the *Planning Act*, subject to the modifications more particularly set out in Part F) of this Decision.

E) COSTS

The Board invited the parties to address the issues of costs, to complete the Hearing process without a further re-attendance. All parties requested costs be awarded.

Counsel for the Region submitted PALS formulated the 'Issues List' but failed to lead any agrology evidence to support the claim the Areas are Specialty Crop Lands. Need for expansion was put in issue, but PALS did not pursue the matter through its planning witness, who, rather, concentrated on where the growth should go. Alternative locations was an issue for PALS yet there was no credible evidence from PALS to support where the growth could, in fact, be located. The impact on the mid-peninsula corridor was an issue for PALS yet no evidence was lead to address impact. Finally, Issue No. 5 placed community self-sufficiency/identity as a matter to be addressed. PALS did not lead detailed evidence in this area. Micro climate was the compelling reason PALS pursued the matter to the Board, in counsel's view. However, Dr. Shaw's evidence was inconclusive and did not warrant a Hearing

Counsel for Pelham agreed with the Region. There has been a 10 year planning review by Pelham, at substantial cost to a small municipality. The Issues List developed by PALS has not been supported by the evidence called. The conduct of PALS has not been reasonable and "ought not to have occurred".

approving Amendment No. 112 to the Regional Niagara Policy Plan as modified as it affects the lands shown on Schedule "A" attached hereto;

2. Allowing the appeal of the Corporation of the Town of Pelham with respect to Town of Pelham Official Plan Amendment No. 30, as it relates to the lands shown on Schedule "A" attached hereto, and approving Town of Pelham Official Plan Amendment No. 30 as it applies to the said lands shown on Schedule "A" attached hereto.

Further, in the Minutes of Settlement (Exhibit 3), the parties agreed to the resolution of the appeals related to ROPA 112 and LOPA 30 as it affects lands owned by 775463 Ontario Limited (Meinen lands):

1. Allowing the appeal of the Corporation of the Town of Pelham, in part, with respect to Town of Pelham Official Plan Amendment No. 30, as it affects the lands shown on Schedule "A" attached hereto, by redesignating the lands shown on Schedule "A" attached hereto in accordance with Schedule "A". This modification shall be subject to and conditional upon the inclusion of the subject lands within the urban boundary for the Fonthill area of the Town of Pelham, as proposed in Amendment No. 112 to the Regional Niagara Policy Plan and in the Town of Pelham Official Plan Amendment No. 30.

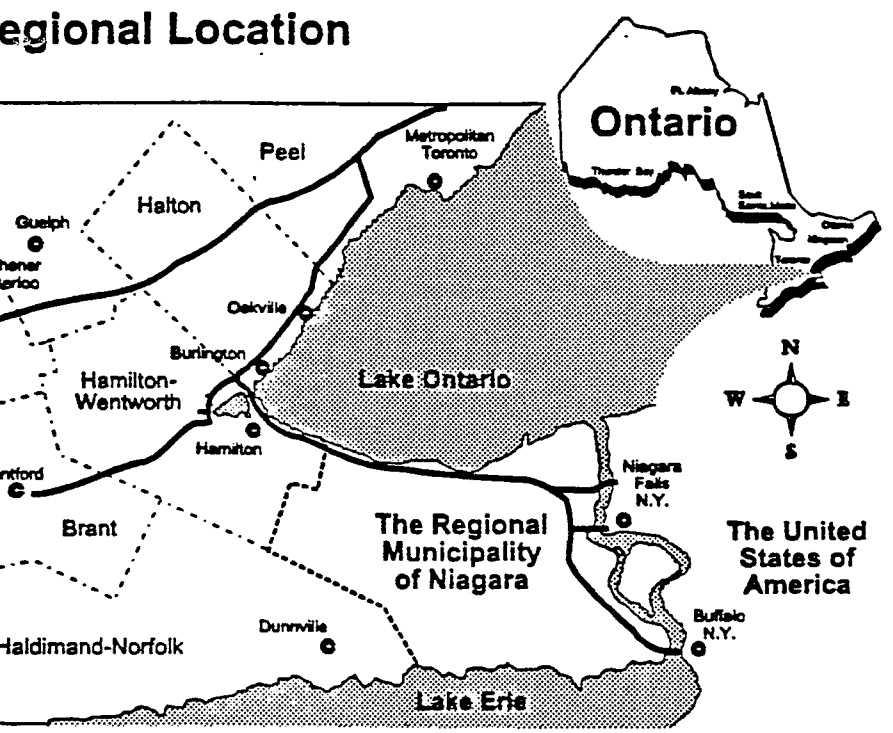
The Board has appended Schedule "A" of Exhibit 1 - Timmsdale lands as Attachment "7", and Schedule "A" of Exhibit 3 - Meinen lands as Attachment "8" respectively to this Decision. Given the evidence and the settlements reached, the Board Orders ROPA 112 and LOPA 30 modified and approved as requested for those two properties.

St. Johns Centre and Pelham also resolved their outstanding issues and filed settled wording acceptable to the parties (Exhibit 18).

The Board considered the proposed modification to LOPA 36 proposed for the Mori lands (Exhibit 87) but will leave the issue of adult ground related housing to the secondary planning process and the deliberations of Pelham Council in consultation with the public.

Counsel for the Region, Pelham and Mori filed a requested Order for the balance of the matters (Exhibit 93). Based on that document and the evidence, in addition to the above-noted disposition for the Timmsdale and Meinen lands, the Board will:

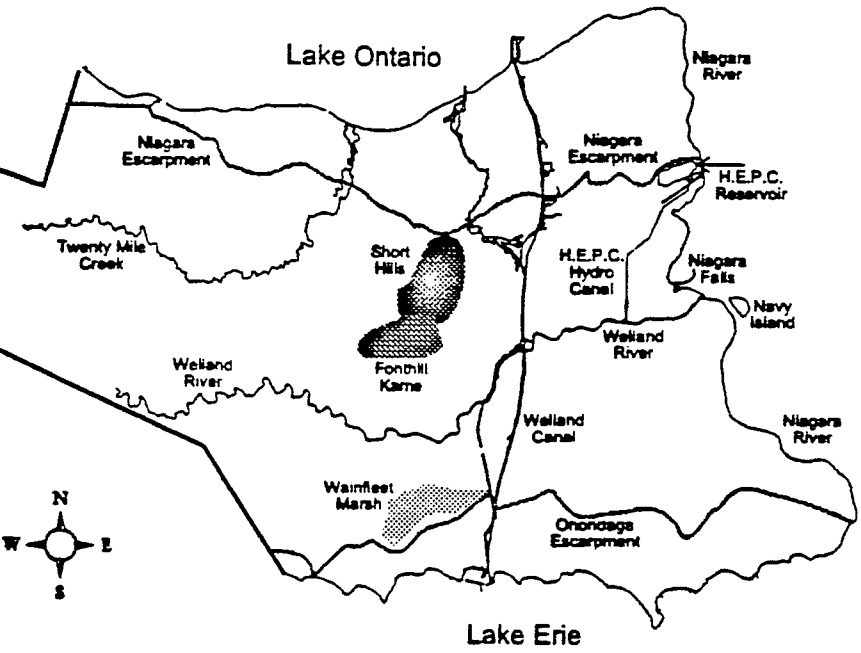
Regional Location

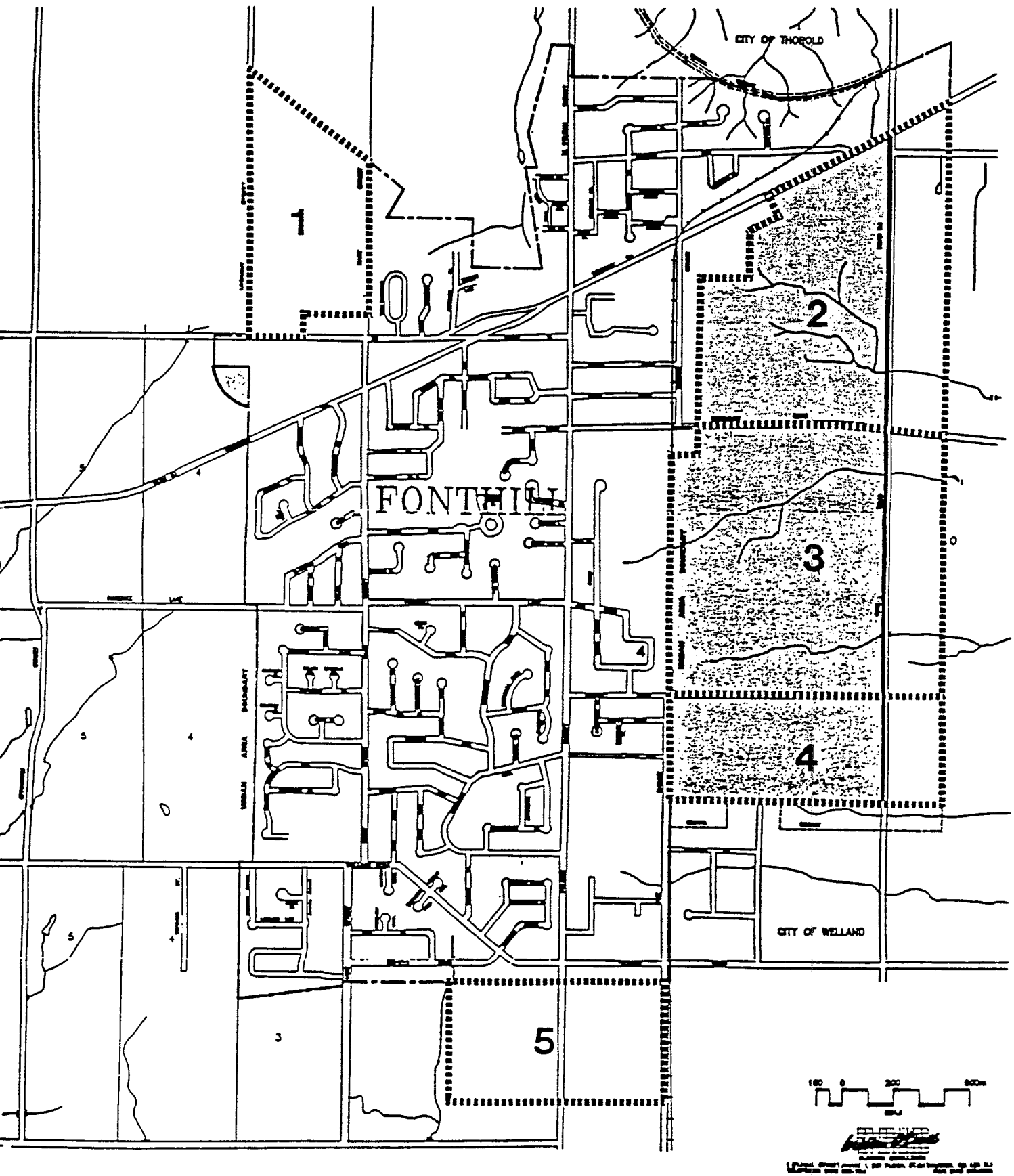


Local Municipalities



Physical Features





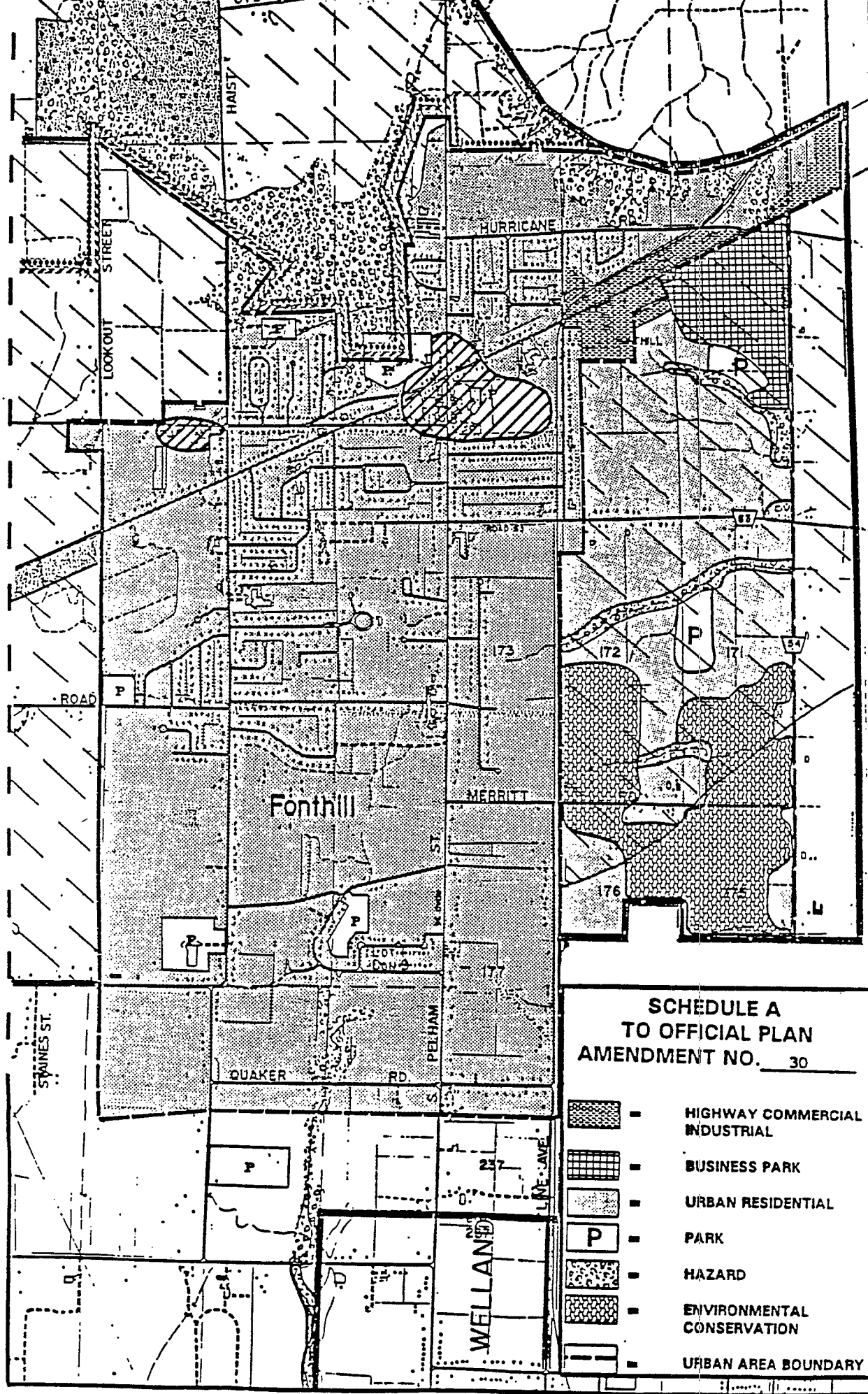
Summary of Non-farm Land Uses vs. Remainder

Non-farm - includes all non-farm land uses and Forested, reforested and scrubland as shown on Exhibit No. 34
Remainder - includes cultivated lands (as listed 1-7 below).

Urban Expansion Areas	Area 1		Area 2		Area 3		Area 4		Total	
	ha	%	ha	%	ha	%	ha	%	ha	%
Total Area	34.0	100.0	65.0	100.0	80.0	100.0	38.0	100.0	217.0	100.0
Total Non-farm/Forested	6.9	19.4	14.9	22.9	23.1	28.9	25.4	66.8	70.3	32.4
Total Remainder	27.1	80.6	50.1	77.1	56.9	71.1	12.6	33.2	146.7	67.6





Breakdown of Remaining Lands (in order of prevalence)	Area 1		Area 2		Area 3		Area 4		Total	
	Ha	%	Ha	%	Ha	%	Ha	%	ha	%
1. Row Crops			15.3	30.5	23.6	41.5			38.9	26.5
2. Hay forage pasture	25.7	94.8			10.8	19			36.5	24.9
3. Nursery			30	59.9					30.0	20.4
4. Idle			0.3	0.6	13.6	23.9	12.6	100	26.5	18.1
5. Orchard	1.4 ^a	5.2	1.4 ^b	2.8	5.0 ^c	8.8			7.8	5.3
6. Vineyard			3.1 ^d	6.2	3.4 ^e	5.9			6.5	4.4
7. Vegetables					0.5	0.9			0.5	0.3
Total	27.1	100	50.1	100	56.9	100	12.6	100	146.7	100.0

- ^a 1 small apple orchard is located on 1 property
- ^b 3 small orchards with an average size of approximately 0.5 ha are located on 3 properties
- ^c 8 small orchards (apples, pears and plums) with an average size of approximately 0.6 ha are located on 2 properties
- ^d 1 vineyard is located on 1 property
- ^e 2 vineyards are located on 1 property



SCHEDULE A to Official Plan Amendment No. 36

Land Use Legend Change from Unique Agriculture to -

-  Area of Natural Scientific Interest (ANSI)
-  Special Deferred Urban Residential Area
-  Deferred Urban Residential Area
-  Fonthill Urban Area Boundary

UPPER TERRACE
AND STORM
BEACHES

MAIN TERRACE

STREET

LOOKOUT

STREET

HAIST

Regional Road #20

0 50 100 200m
SCALE

Figure 3-18 (Revised)**Adequacy of Pelham's Housing Supply to 2016 and 2020**

	<u>1996- 2016</u>	<u>1996- 2020</u>
	<i>Units</i>	
Projected Total Housing Demand 1996-mid 2016 (from UABES: Residential Needs Report)	2,007	n.a.
Projected Minimum Total Housing Demand as adjusted by Clayton Research	2,601	3,101
Less Units Constructed 1996-1999	<u>-466</u>	<u>-466</u>
Projected Total Housing Demand 2000 - Mid 2016 (2020)	2,135	2,635
Total Practical Housing Supply as of December 31, 1999 (from Residential Needs Update - 1999)	<u>-800</u>	<u>-800</u>
Shortfall Between Demand and Supply Excluding Potential Supply Within Areas 2-4 and Timsdale Lands	1,335	1,835
Potential Practical Supply Within Areas 2-4 and Timsdale Lands*	<u>-979</u>	<u>-979</u>
Shortfall Between Demand and Supply Including Areas 2-4 and Timsdale Lands*	356	856

* Assumes 65 units on the additional Meinen lands

Source: Clayton Research based on Miller O'Dell Planning Associates Inc., **Urban Boundary Expansion Study: Residential Needs Report**, October 31, 1996 and BLS Planning Associates, **Residential Needs Update - 1999**

Figure 2-3

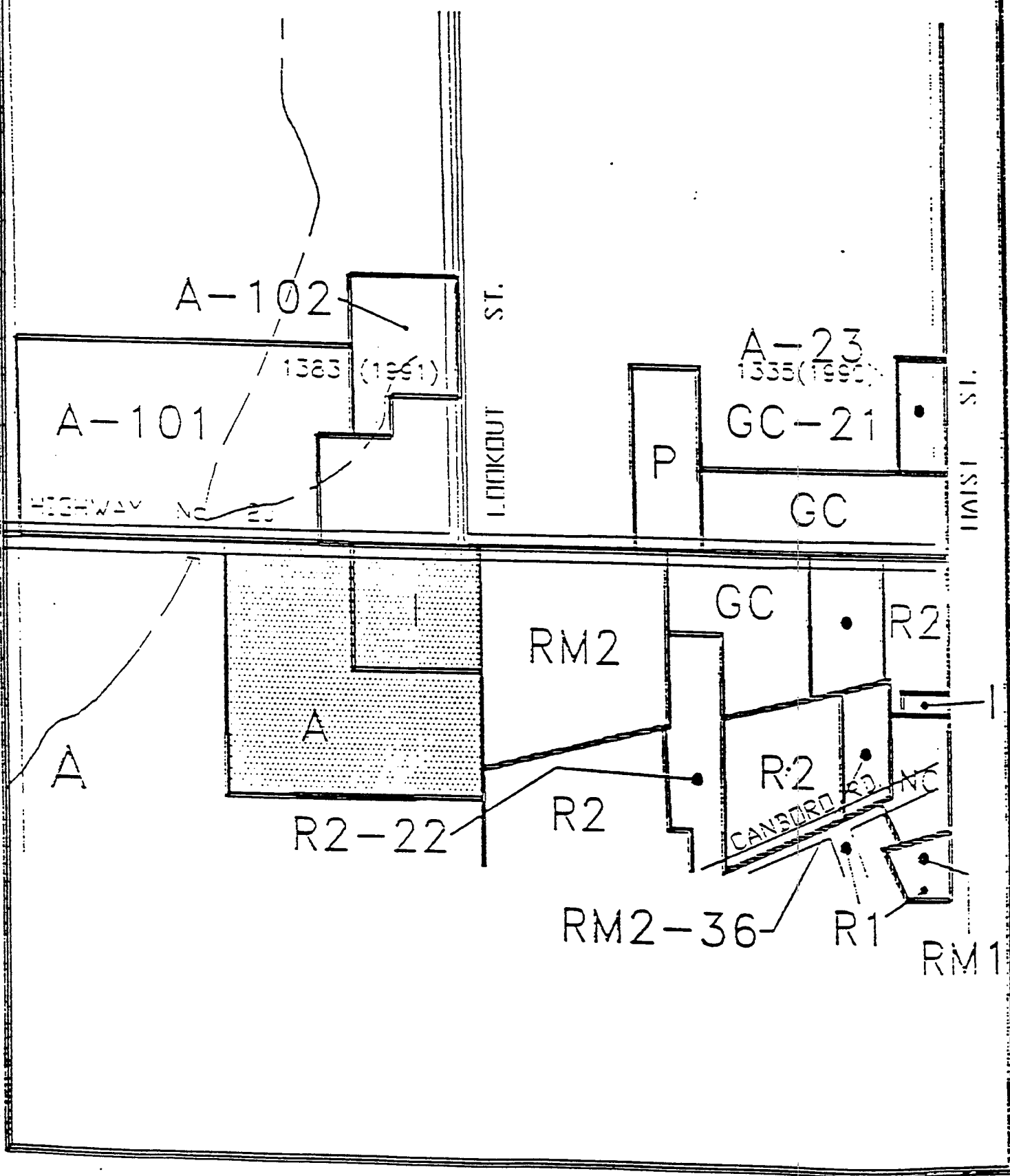
Forecast of Household Growth in Niagara Region and Pelham Market Area, 1995-2016

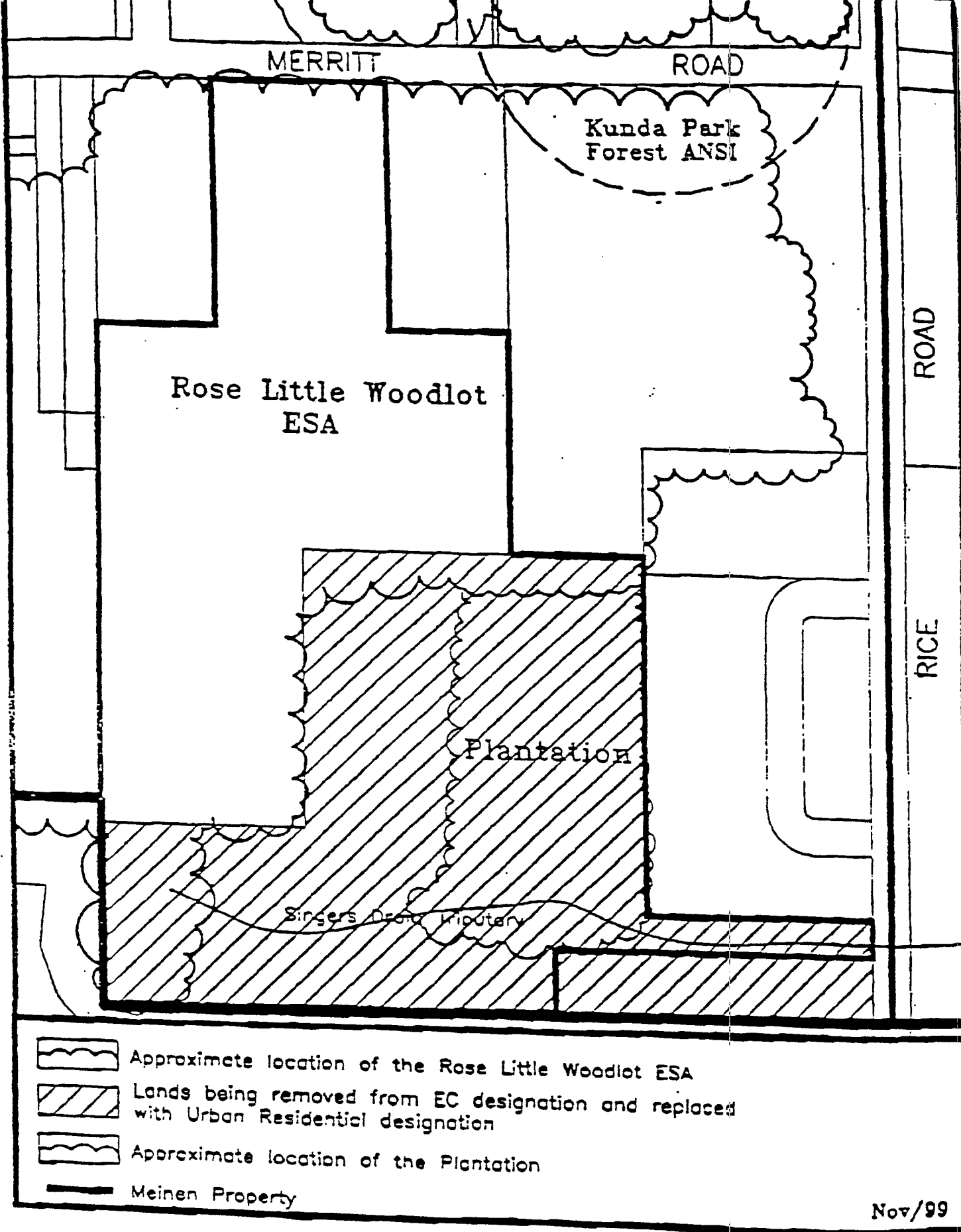
(Prepared by Niagara Region in February, 1996)

	Niagara-on-the-Lake	Niagara Falls	Pelham	St. Catharines	Thorold	Welland	Sub-Total (Market Area)	Niagara Region
<u>Trend Projection</u>								
	<i>Households</i>							
Non-Urban	140	238	171	0	51	112	712	2,519
Urban	805	6,960	1,684	12,213	2,368	4,999	29,029	37,957
Total	945	7,198	1,855	12,213	2,419	5,111	29,741	40,476
Adjustment for Urban Land Capacity	1,300	900	200	-5,350	2,000	900	-50	0
<u>Adjusted Projection</u>								
Non-Urban	140	238	171	0	51	112	712	2,519
Urban	2,105	7,860	1,884	6,863	4,368	5,899	28,979	37,957
Total	2,245	8,098	2,055	6,863	4,419	6,011	29,691	40,476
	<i>Percent of Region</i>							
<u>Adjusted Projection</u>								
Non-Urban	5.6	9.4	6.8	0.0	2.0	4.4	28.3	100.0
Urban	5.5	20.7	5.0	18.1	11.5	15.5	76.3	100.0
Total	5.5	20.0	5.1	17.0	10.9	14.9	73.4	100.0

Source: Clayton Research based on Region of Niagara Report DPD 32-96, Distributions of Household and Population Forecasts by Municipality for Niagara 1994-2016, February 28, 1996

FIGURE 1
Timsdale Land





That Amendment No. 30 to the Town of Pelham Official Plan be approved subject to the following modifications, and Council's decision not take effect until Regional Policy Plan Amendment 112 has been approved by the Province.

- Land Use Schedule A – That the land use schedule be revised to show the interior 8 acre parcel of land referred to as the "Timmsdale lands", located south of Regional Road 20 opposite Lookout St. behind the existing dwelling, as being within the urban area boundary and that these lands be designated Urban Residential.
- Section 1.58, introductory paragraph, second line: Change the reference to "Highway 20" to "Regional Road 20".
- Policy 1.58.2.3, first and second lines: Change the reference to "Highway 20" to "Regional Road 20".
- Policy 1.59.2.a, third line: change the word "conservative" to "conservation".
- Policy 1.59.2.a, at the end of the paragraph add: "in accordance with Provincial Policy requirements, guidelines and legislation".
- Policy 1.59.2.b, first line: Change the word "area" to "areas".

That all parties be notified of Regional Council's decision on this application in accordance with Provincial Regulations.

That staff issue a declaration of final approval for the amendment, 20 days after notice of Council's decision has been given provided that no appeals against the decision have been lodged.

That the Ministry of Municipal Affairs and Housing be requested to modify Regional Policy Plan Amendment 112 to include the "Timmsdale" lands within the urban area boundary for the Town of Pelham.

Carried.

Policy 1.63 Storm and Surface Water Runoff Management Policies for Urban Expansion Areas

1.63.1 These policies will apply to the Urban Expansion Areas approved pursuant to Official Plan Amendments 30 and 36 of the Town of Pelham, as identified on Schedule A to the Town of Pelham Official Plan.

1.63.2 Within Urban Expansion Areas, the objective of the stormwater management policies is:

1. to maintain and improve the health and condition of the receiving watercourse;
2. to achieve no net increase in stormwater run-off and, where appropriate, a net decrease in stormwater run-off, and to moderate peak stormwater flows;
3. to maintain and, where possible, improve the quality of stormwater entering surface and groundwater supplies;
4. to promote the use of naturalized methods of stormwater management and, in particular, measures to promote the infiltration of stormwater into the ground;

1.63.3 In addition to the general objectives identified in Policy 1.63.2, the Town of Pelham recognizes that Twelve Mile Creek is one of the most scenic and environmentally significant watersheds in Niagara and will seek to maintain, and where possible, enhance these characteristics.

1.63.4 The Town of Pelham shall require, prior to the approval of any applications for rezoning, site plan or plan of subdivision in Urban Expansion Areas, the preparation of a Subwatershed Study which achieves the objectives in Policy 1.63.2, and where applicable, in Policy 1.63.3. Such Subwatershed Study shall involve a broad circulation to the affected areas by publication in area newspapers soliciting public input and notice to all persons or bodies that provide to the Town of Pelham a written request for notice of the Subwatershed Study. The recommendations of the Subwatershed Study shall be incorporated into the Urban Expansion Area secondary plan. In respect of the Timmsdale Lands, a drainage study may be submitted prior to such development applications in substitute for a subwatershed study.

1.63.5 As condition of development approval, the Town of Pelham shall require the submission of a stormwater management plan which conforms with the Subwatershed Study. The stormwater management plan shall include measures to ensure that all construction sites introduce, directly or indirectly, a minimum of silt and debris to natural watercourses. The specific measures recommended by the Subwatershed Study shall be secured through the subdivision or site plan agreement.

Note: In addition to the adoption of the text of the above policies, Schedule A to Official Plan of the Town of Pelham will be modified to show a boundary around the Urban Expansion Areas.