

THE CORPORATION OF THE  
TOWN OF PELHAM

BY-LAW NO. 2771 (2006)

Being a by-law to authorize the Mayor and Clerk to enter  
into an Agreement with William Martin and Mary Martin

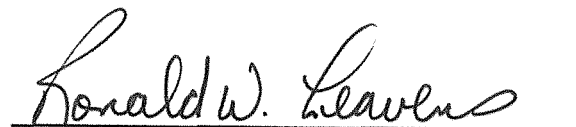
WHEREAS the Council of the Corporation of the Town of Pelham deems it  
desirable to enter into a Development Agreement with William Martin and Mary Martin with  
regard to the development of Lands located at 155 Port Robinson Road.

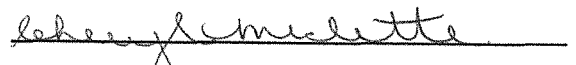
NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF  
PELHAM ENACTS AS FOLLOWS:

(1) THAT the Development Agreement attached hereto and made part of this by-law  
between the Corporation of the Town of Pelham and William Martin and Mary Martin be  
and the same is hereby approved.

(3) THAT the Mayor and Clerk be and each of them is hereby authorized and  
instructed on behalf of the Corporation of the Town of Pelham to execute the said  
Development Agreement and the Clerk is hereby authorized to affix the Corporate Seal  
thereto.

READ A FIRST, SECOND AND THIRD TIME  
AND FINALLY PASSED BY COUNCIL THIS  
5TH DAY OF JUNE, 2006 A.D.

  
MAYOR RONALD W. LEAVENS

  
CLERK CHERYL MICLETTE

# 2171 (2006)

### Properties

PIN 64063 - 0113 LT ☒ Affects Part of Prop  
Description PT THOROLD TP LT 166 THOROLD, BEING PART 2 ON PLAN 59R-13156; PELHAM  
Address 155 PORT ROBINSON ROAD  
PELHAM

### Consideration

Consideration \$ 1.00

### Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name THE CORPORATION OF THE TOWN OF PELHAM  
Address for Service P. O. Box 400  
20 Pelham Town Square  
Fonthill, Ontario  
L0S 1E0

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a municipal corporation THE CORPORATION OF THE TOWN OF PELHAM BY DAVID AUGUSTYN-MAYOR AND CHERYL MICLETTE-CLERK.

### Statements

This notice is for an indeterminate period

Schedule: See Schedules

### Signed By

Robert Bruce Smith 201-247 East Main St. PO Box 67 acting for Applicant(s) Signed 2007 02 05  
Welland L3B 5N9  
Tel 9057355684  
Fax 9057353340

### Submitted By

LANCASTER, BROOKS & WELCH 201-247 East Main St. PO Box 67 2007 02 05  
(WELLAND) Welland L3B 5N9  
Tel 9057355684  
Fax 9057353340

### Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

**TOWN OF PELHAM  
DEVELOPMENT AGREEMENT**

THIS AGREEMENT made this 22 day of January, 2006, and authorized by By-law No. 2771 (2006) of The Corporation of the Town of Pelham.

**BETWEEN:**

**WILLIAM JOHN MARTIN**

Hereinafter called the OWNER

**AND:**

**THE CORPORATION OF THE TOWN OF PELHAM**

Hereinafter called the TOWN

**WHEREAS:**

1. The Owner represents and warrants that it is the registered owner, in fee simple, of the lands described in Schedule "A" (all of which lands are hereinafter collectively referred to as the "Lands");
2. The Owner represents and warrants that it is the registered owner, in fee simple of the lands described as Part of Lot 166, former Township of Thorold, Town of Pelham, The Regional Municipality of Niagara, designated as Part 2 on Plan 59R-13156; (the "Proposed Severance Lands");
3. An application was made by the Owner to the Town of Pelham Committee of Adjustment seeking consent to sever and convey the Proposed Severance Lands;
4. The said Committee of Adjustment granted provisional consent to the applications; and
5. The provisional consent requires that a development agreement be entered into with the Town providing for the future connection of the Lands to municipal services.

**NOW THEREFORE**, THIS Agreement witnesseth that in consideration of the mutual covenants and agreements herein contained and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree with each other as follows:

**1. DEFINITIONS**

In this Agreement:

- (a) Director means the Director of Operations or designate of the Town.
- (b) Lands means the lands described in Schedule "A" attached hereto and made part of this Agreement.
- (c) Owner means William John Martin.
- (d) Required where not specified, means required by this Agreement and/or an appropriate authority.
- (e) Street means street as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (f) Town means The Corporation of the Town of Pelham or any of its authorized full-time employees.
- (g) Treasurer means the Director of Financial Services of the Town.
- (h) Works means these works more specifically described in paragraph 3.

## 2. GENERAL

- (a) The Owner hereby constitutes any successor-in-title to the Lands their agent with full authority to enter into any agreement with the Town to amend this Agreement from time to time.
- (b) The Owner agrees that upon the execution of this Agreement, the Lands are charged with the performance of this Agreement.
- (c) It is understood and agreed that this Agreement and everything contained herein shall enure to the benefit of and be binding upon the heirs, executors, administrators, mortgagees, successors-in-title and assigns of each of the parties hereto as the case may be and shall constitute a covenant running with the Lands. The Owner hereby consents to registration of this Agreement on title to the Lands.
- (d) The Owner acknowledges and agrees that all municipal taxes shall be paid in full prior to the execution of this Agreement and such payment shall be made from time to time as each such event may occur so that payments of municipal taxes are at all times up-to-date.
- (e) The cost, including legal, planning, engineering or other professional or administrative costs incurred by the Town, of any work required to be carried out by the Town pursuant to this Agreement shall be calculated by the Town, whose decision on the amount that is fixed shall be final. The cost of any such work shall be at the expense of the Owner. Any cost of such work shall be paid by the Owner to the Town forthwith upon demand thereof. In the event of failure by the Owner to pay such costs within thirty days of serving notice thereof by the Town upon the Owner, the Town shall have the right to recover such incurred costs by action or in like manner as municipal taxes or to draw upon the letter of credit provided by the Owner pursuant to paragraph 6.
- (f) In the event of any dispute respecting the interpretation of any Town standards, the matter is to be decided by the council of the Town and its decision is final and binding.
- (g) The Owner shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative tribunal the right of the Town to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement or this clause may be pleaded as an estoppel against the Owner in any such proceeding.
- (h) This Agreement shall be governed by the laws of the Province of Ontario.

## 3. DEVELOPMENT

- (a) The Owner covenants and agrees to connect the dwelling located on the Lands to all available municipal services at such time as they are made available to the lands and to disconnect the dwelling from any septic system located on the Lands or the Proposed Severance Lands. All work necessary to complete any such connection, disconnection, installation and grading (including those matters specified in Schedule "B") are referred to as the "Works".
- (b) The Owner shall, at its own expense, construct a sanitary sewer lateral on the Lands to adequately serve the building, such construction shall be in accordance with specifications and a design approved by the Director. No storm, surface or roof water or weeping tiles shall be discharged into the sanitary sewer system. The sanitary sewer lateral shall be a minimum of 125mm diameter building sewer pipe or equal acceptable to the Director.
- (c) Domestic waste from any building located on the Lands shall be discharged into the sanitary sewer system through a drain connected to the sanitary sewer system through a drain connected to the sanitary sewer lateral servicing the Lands.

- (d) The Owner acknowledges and agrees that the Town shall be under no obligation to permit development of the Lands and there shall be no further development until such time as connection to all municipal services is achieved.

#### **4. DAMAGE**

The Owner agrees to fully repair any damage incurred to the Town's property or any other property as a result of carrying out the construction of the Works and/or in accessing the Lands to the satisfaction of the Director. The Owner agrees that, should the repairs not be completed in a timely manner, the Town may complete the repairs at the Owner's full expense.

#### **5. INDEMNIFICATION**

The Owner, on behalf of itself, its successors and assigns, including its successors in title of the Lands, hereby releases and discharges and indemnifies the Town from and against all actions, causes of action, suits, claims and demands whatsoever which may arise by reason of:

- (a) any alteration of the existing grade or level of any Street or Streets to bring the said grade or level in conformity with the grade or level required by the Director; and
- (b) any damage to the lands abutting on any Street or Streets or to any building erected thereon arising from or in consequence of any such alteration of grade or level; and
- (c) any damages or injuries (including death) to persons or damage to property occurring or arising on any Street or Streets, however caused.

#### **6. LETTER OF CREDIT**

Prior to the execution of this Agreement by the Town, for payment of services to be rendered by the Town, its servants and its agents as required by this Agreement, and for presently outstanding payments owing to the Town, the Owner shall, in accordance with Schedule "B" annexed hereto, deposit with the Town a letter of credit.

The Owner will deposit with the Town a letter of credit drawn upon a chartered bank in favour of the Town and in a form satisfactory to the Treasurer, in an amount approved by the Director, which letter of credit shall be sufficient to guarantee the satisfactory completion of the Works or any portion of the Works as established by the Town in its sole discretion, and payments or any part thereof required to be made by this Agreement, and will, without restricting the generality of the foregoing, guarantee the following:

The amount of the letter of credit required hereunder shall not be reduced until all of the conditions of this agreement are complied with and the estimated costs of rectifying any outstanding deficiencies, as estimated in the sole discretion of the Director.

#### **7. NOTIFICATION**

All notices required or permitted to be given by one party to the other shall be given in writing either by prepaid registered mail or delivered personally addressed,

In the case of the Town

20 Pelham Town Square  
P. O. Box 400  
Fonthill ON L0S 1E0

In the case of the Owner

155 Port Robinson Road  
RR #2  
Welland ON L3B 5N5

or at such other addresses as may be given by any of them to the other in writing from time to time, and such notices shall be deemed to have been received, if mailed, on the third day following that on which it was so mailed and if delivered, on the day of such delivery.

## 8. POSTPONEMENT AND SUBORDINATION

The Owner covenants and agrees at its own expense, to obtain and register such documentation in form satisfactory to the Town's solicitor from all mortgagees or encumbrancers as may be deemed necessary by the Town to postpone and subordinate their interest in the Lands to the interest of the Town to the extent that this Agreement and all related documentation to be registered shall take effect and have priority as if they had been executed and registered before the execution and registration of the document or documents giving to the mortgagees and/or encumbrancers their interest in the Lands.

## 9. SCHEDULES


The schedules attached hereto are a part of this Agreement. All schedules are to be interpreted as if the contents thereof were included in the Agreement.

## 10. BINDING EFFECT

This Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

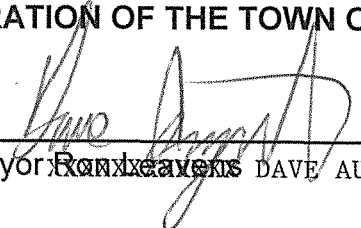
**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

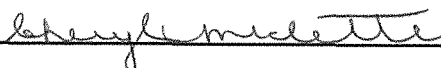
  
Witness

  
William John Martin

**OWNER**

**THE CORPORATION OF THE TOWN OF PELHAM**

  
Mayor: ~~Ron Leavens~~ DAVE AUGUSTYN

  
Clerk Cheryl Miclette