

THE CORPORATION OF THE
TOWN OF PELHAM

BY-LAW NO. 2862 (2007)

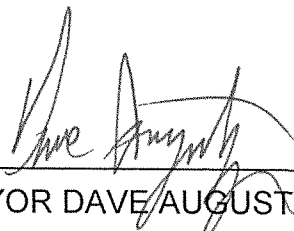
Being a by-law to authorize the Mayor and Clerk to enter into a
Site Plan Agreement with Donald Keppy and Thomas Keppy
(529 Webber Road)


WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to enter into a Site Plan Agreement with Donald Keppy and Thomas Keppy with regard to the development of a temporary paint ball business.

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

- (1) THAT the Site Plan Agreement attached hereto and made part of this by-law between the Corporation of the Town of Pelham and Donald Keppy and Thomas Keppy be and the same is hereby approved.
- (2) THAT the Mayor & 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 Site Plan 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
7TH DAY OF MAY, 2007 A.D.


MAYOR DAVE AUGUSTYN


CLERK CHERYL MICLETTE

The applicant(s) hereby applies to the Land Registrar.

Properties

PIN 64028 - 0318 LT
Description PT LT 10 CON 13 PELHAM PART 1 59R11739; PELHAM
Address 529 WEBBER 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 20 Pelham Town Square
P. O. Box 400
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 DAVE 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 Signed 2007 06 11
Welland
L3B 5N9 Applicant(s)
Tel 9057355684
Fax 9057353340

Submitted By

LANCASTER, BROOKS & WELCH (WELLAND) 201-247 East Main St. PO Box 67 2007 06 11
Welland
L3B 5N9
Tel 9057355684
Fax 9057353340

Fees/Taxes/Payment

Statutory Registration Fee \$60.00
Total Paid \$60.00

THIS AGREEMENT made in triplicate this ²⁸⁶² 4th day of June, 2007 A.D.

BETWEEN:

DONALD ROBERT KEPPY and THOMAS DUNCAN KEPPY

Hereinafter called the "Owners"

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter called the "Town"

OF THE SECOND PART

WHEREAS the Owners purport to be the owners of the lands in the Town of Pelham described in Schedule "A" (the "Lands") attached hereto;

AND WHEREAS the Owners are desirous of developing a temporary paintball facility in accordance with Schedule "B" attached hereto and filed in the Town's offices;

AND WHEREAS the Town has agreed to permit the said construction subject to certain terms and conditions;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Dollar (\$1.00) now paid by the Owners to the Town (the receipt whereof is hereby acknowledged), the Parties hereto mutually covenant and agree as follows: -

1. **DEFINITIONS**

In this Agreement:

- (a) CHIEF BUILDING OFFICIAL shall mean the Chief Building Official of the Corporation of the Town of Pelham.
- (b) CLERK shall mean the Clerk of the Corporation of the Town of Pelham.
- (c) COUNCIL shall mean the Council of the Corporation of the Town of Pelham.
- (d) DIRECTOR OF FINANCIAL SERVICES shall mean the Director of Financial Services of the Corporation of the Town of Pelham.
- (e) DIRECTOR OF OPERATIONS shall mean the Director of Operations of the Corporation of the Town of Pelham or designate.
- (f) DIRECTOR OF PLANNING SERVICES shall mean the Director of Planning Services of the Corporation of the Town of Pelham.
- (g) FACILITIES AND WORKS shall mean and includes those facilities and works which are shown on or referred to in any one or more of the plans, drawings and schedules to this Agreement.
- (h) LANDS shall mean the lands described in Schedule "A" attached hereto.
- (i) PROFESSIONAL ARCHITECT shall mean a Professional Architect registered with the Ontario Association of Architects.
- (j) PROFESSIONAL ENGINEER shall mean a Professional Engineer registered with the Association of Professional Engineers.

2. **GENERAL PROVISIONS**

- (a) The Owners shall develop and maintain the lands only in accordance with the terms and conditions contained herein and any other applicable by-law of the Town.

- (b) The Owners shall perform any and all construction and installation on the lands in accordance with the terms and conditions contained herein and as shown on Schedule "B" attached hereto and forming part of this Agreement to the reasonable satisfaction of the Town.
- (c) The Owners shall not perform any construction or installation on the lands except in accordance with the terms and conditions contained herein and shown on said Schedule "B" attached hereto and forming part of this Agreement and to the reasonable satisfaction of the Town.
- (d) The Owners shall maintain and keep in repair, driveways and access servicing the buildings located in the development.
- (e) The Owners grant to the Town, its servants, agents and assigns permission to enter upon the Lands for the purpose of inspection of any facilities and works referred to in this Agreement and for the purpose of the completion of any facilities and works in accordance with this clause and this Agreement.
- (f) The Owners will, at all times, indemnify and save harmless the Town from all loss, costs, damages and injuries which the Town may suffer or be put to for or by reason of the construction, maintenance or existence of any facilities and works done by the Owner, its contractors, servants or agents on the lands or which the Town may suffer or be put to for or by reason of the completion by the Town of any of the required facilities and works in accordance with this clause and this Agreement.
- (g) The Owners 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 may be pleaded as an estoppel against the Owner in any such proceeding.

3. SANITARY SYSTEM

The Owners undertake to repair and forever maintain the private sewage system located on the said lands and, without limiting the generality of the foregoing, no storm, surface or roof water or weeping tiles shall be discharged into the sanitary sewer system.

4. LANDSCAPING AND SIGNAGE

- (a) The Owners shall, at their own expense, adequately landscape, plant and maintain all of the Lands not required for buildings, parking or roads so as at all times to provide effective green areas enhancing the general appearance of the development contemplated herein, said planting and landscaping shall be in accordance with the approved Plan attached hereto as Schedule "B". Minor changes to the Plan may be permitted subject to the approval of the Director of Planning Services.
- (b) Unless otherwise approved or required by the Town, the Owners shall not remove trees or other vegetation from the said lands until such time as a Building Permit is issued for the construction of the buildings contemplated herein on the said Lands.
- (c) The Owners, shall at their own expense, post signage delineating adjacent property lines to the north and east of the gaming area in accordance with the approved Plan attached hereto as Schedule "B". Minor changes to the Plan may be permitted subject to the approval of the Director of Planning Services.

5. HYDRO

The Owner shall be responsible for the cost of maintaining and repairing the hydro system located on said Lands in perpetuity.

6. GARBAGE DISPOSAL

- (a) The Owners shall at all times provide adequate collection and disposal of garbage and sanitary refuse.

- (b) If it is the intention of the Owners to provide for Regional solid waste collection services within the proposed development, the Owners shall follow the Regional Policy entitled "Waste Collection By Way Of Entry On Private Property" and attachments thereto.

7. FLOODLIGHTING

The Owners shall ensure that any lighting facility used to illuminate any building or parking area shall be designed and installed as to deflect from adjacent buildings and streets.

8. PARKING, CURBING, DRIVEWAYS AND SIDEWALKS

- (a) The Owners shall, at its own expense, provide and at all times maintain on the said Lands, paved asphalt and gravel parking areas and driveways or such other form of surfacing acceptable to the Town.
- (b) The Owners shall obtain a Regional Entrance Permit in order to secure approval to construct within the Regional roadway.

9. BUILDING AND SERVICES

The Owners shall construct and the Town shall permit the construction of the buildings and other structures on the Lands in accordance with Schedule "B" attached hereto to permit the development provided that all such uses shall comply with all building and zoning requirements of the Town.

10. DEPOSIT FOR FACILITIES AND WORKS

- (a) At the time of execution of this Agreement, the Owners shall pay to the Town a deposit to guarantee its compliance with this Agreement in an amount equal to the lesser of:
 - i. the estimated cost of completing the facilities and works; or
 - ii. \$60,000.00
- (b) The deposit shall be paid to the Town in cash or in the form of an irrevocable letter of credit from a chartered bank or from a recognized lending institution, subject to the approval of the Treasurer and shall be held as security to ensure the completion of the facilities and works until such time as the Town permits its release as ordered herein. The deposit may be used to pay for the cost of any work performed by the Town in accordance with the following clause in the event of the failure of the Owners to comply with the terms of this Agreement.
- (c) Upon completion of the facilities and works, the Owners shall provide to the Town confirmation in writing that the approved plans, appended hereto, have been complied with. When such confirmation has been received, the Chief Building Official shall confirm such compliance and the deposit, less any amounts expended to enforce compliance with the agreements and any amounts refunded or reduced as the work required by this agreement progresses, shall be returned to the Owners, without interest.
- (d) The Town may, from time to time, demand an increase in the sum of the deposit in accordance with increases in the cost of performing the works required herein to be completed and the Owners covenant and agree to make such increase. At the sole discretion of the Chief Building Official the amount of the deposit may be reduced at any time after the Owners have reached the stage where the costs to complete the facilities and works is less than the amount of the deposit.
- (e) The release of the deposit by the Town does not release the Owners from their obligation to maintain all of the facilities and works pursuant to this Agreement.
- (f) The Owners agree that all of the facilities and works required to be provided by the Owners shall be provided, installed or constructed by the Owners within

one hundred and eighty (180) days after the date of substantial completion of the proposed development as determined by the Chief Building Official and shall be maintained at all times in good condition.

11. DEFAULT

Upon breach by the Owners of any covenant, term, condition or requirement of this Agreement, or upon the Owners becoming insolvent or making any assignment for the benefit of creditors, the Town, at its option, may declare the Owners to be in default. Notice of such default shall be given by the Town, and if the Owners shall not remedy such default within such time as provided in the notice, the Town may declare the Owners to be in final default under this Agreement. Upon notice of default having been given, the Town may require all work by the Owners, its servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default shall have been remedied, and in the event of final default, may require all work as aforesaid, to cease. Upon final default of the Owners, the Town may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:

- (a) enter upon the subject Lands by its servants, agents and contractors and complete any work, service, repair or maintenance wholly or in part required herein to be done by the Owners, and collect the cost thereof from the Owners and/or enforce any security available to it;
- (b) make any payment which ought to have been made by the Owners to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;
- (c) retain any sum of money heretofore paid by the Owners to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;
- (d) bring action to compel specific performance of all or any part of this Agreement for damages;
- (e) exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

12. COVENANTS

The Owners covenant for themselves, its successors and assigns and the Owners from time to time of the said Lands and the burden of the covenants contained in this Agreement shall be deemed to be negative and shall run with and be binding upon the Lands to and for the Town, its successors and assigns.

13. REGISTRATION

The Owners agree and consent to the registration of notice of this Agreement against the said Lands.

14. OBLIGATION

This agreement and the provisions hereof do not give to the Owners or any person acquiring any interest in the said Lands (each hereinafter in this paragraph called "such person") or any other person any rights against the Town with respect to the failure of any such person to perform or fully perform any obligation under this agreement, or the failure of the Town to force any such person to perform or fully perform any obligation under this agreement or any negligence of any such person in the performance of the said obligation.

15. BUILDING PERMIT

Notwithstanding any of the provisions of this agreement, the Owners, their successors and assigns, shall be subject to all of the by-laws, as amended, of the Town at the time of the issuance of a Building Permit required pursuant to the terms of the agreement or at the time of the execution of this agreement, whichever is applicable.

16. PLANS

The Owners agree that all plans shall be drawn by a Professional Architect or by a Professional Engineer and all surveys by an Ontario Land Surveyor, subject to the reasonable satisfaction of the Town.

17. NOTICES

Any notice, demand, acceptance or request provided for in this agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered or sent by registered mail (postage prepaid) as follows:

To the Town at: Clerk
Town of Pelham
20 Pelham Town Square
P. O. Box 400
Fonthill ON L0S 1E0

To the Owners at: Donald Robert Keppy and Thomas Duncan Keppy
7964 Paddock Trail Drive
Niagara Falls ON L2H 1X2

or as such other address as the party to whom such notice is to be given shall have last notified the party giving the notice in the manner provided in this paragraph 20. Any notice delivered to the party to whom it is addressed in this paragraph 20 shall be deemed to have been given and received on the day it is so delivered at such address. Any notice mailed as aforesaid shall be deemed to have been given and received on the fifth day next following the date of its mailing.

18. SCHEDULES

The original of the plans set out in Schedule "B" attached is available at the offices of the Town at the address set out in paragraph 17.

19. BINDING EFFECT

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

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date and year first above written.

DONALD ROBERT KEPPEY

Ellen Schmidt
Witness
(Name) ELLEN SCHMIDT

Donald Robert Keppy

THOMAS DUNCAN KEPPEY

Nancy Yungblut
Witness
(Name) NANCY YUNGBLUT

Thomas Duncan Keppy

THE CORPORATION OF THE TOWN OF
PELHAM

Dave Augustyn
Mayor Dave Augustyn

Cheryl Miclette
Clerk Cheryl Miclette