

THE CORPORATION OF THE  
TOWN OF PELHAM

BY-LAW NO. 2939 (2008)

Being a by-law to authorize the Mayor and Clerk to enter  
into an Agreement with Keith John McVetty and Patricia  
Mary McVetty

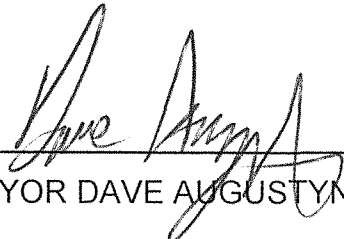
WHEREAS the Council of the Corporation of the Town of  
Pelham deems it desirable to enter into a Development Agreement with  
Keith John McVetty and Patricia Mary McVetty with regard to the  
development of lands located at 1192 Balfour Street.

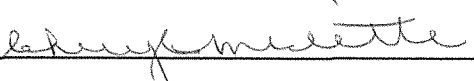
NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF  
PELHAM ENACTS AS FOLLOWS:

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

(2) 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  
19TH DAY OF FEBRUARY, 2008 A.D.

  
MAYOR DAVE AUGUSTYN

  
CLERK CHERYL MICLETTE

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

Properties

PIN 64030 - 0382 LT ☒ Affects Part of Prop  
Description PT LT 24 W/S BALFOUR AV PL 703 PELHAM PT 1, 2, 3 AND 4 59R6852; PELHAM  
Address 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  
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 2008 05 13  
Welland  
L3B 5N9 Applicant(s)  
Tel 9057355684  
Fax 9057353340

Submitted By

LANCASTER, BROOKS & WELCH (WELLAND) 201-247 East Main St. PO Box 67 2008 05 13  
Welland  
L3B 5N9  
Tel 9057355684  
Fax 9057353340

Fees/Taxes/Payment

Statutory Registration Fee \$60.00  
Total Paid \$60.00

THIS AGREEMENT made this 13<sup>th</sup> day of May, 2008

BETWEEN:

KEITH JOHN MCVETTY AND PATRICIA MARY MCVETTY

Hereinafter called the "Developer"

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter called the "Town"

OF THE SECOND PART

**WHEREAS** the Developer purports to be the owner of the lands in the Town of Pelham described in Schedule "A" and has applied to the Town of Pelham Committee of Adjustment for consent under application B-08/07P and B-09/07P and has obtained such consent subject to conditions;

**AND WHEREAS** the decision of the Committee of Adjustment was conditional upon, among other things, the entering into an Agreement by the Developer and the Town;

**AND WHEREAS** the Town requires the Developer, before final approval of the consents, to agree to certain terms and conditions for the development for which approval is sought;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the Town approving the said proposed development, and in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada now paid by the Developer to the Town (the receipt thereof is hereby acknowledged), the Parties hereto mutually covenant and agree as follows:

1. **DEFINITIONS**

In this Agreement:

- (a) **BUILDER** means the person engaged by the Owner or subsequent Owner to construct a Building or any other work on the Lot.
- (b) **BUILDING BY-LAW** means the Building By-law No. 2277 (2001) passed by the Town and amended from time to time.
- (c) **BUILDING** means any structure which is used or intended to be used for the shelter, accommodation or enclosure of persons, animals or chattels, and includes any structure as defined as a Building in the *Building Code Act* or in the Building By-law, but does not include any vehicles as defined herein.
- (d) **BUILDING CODE ACT** means the *Building Code Act*, R.S.O. 1990, c.B. 13, as amended, and all regulations thereto.
- (e) **BUILDING PERMIT** means a permit issued by the Chief Building Official of the Town and required pursuant to the provisions of the *Building Code Act*, as amended, or any successor thereto and the Building By-law of the Town and amendments thereto.
- (f) **CHIEF BUILDING OFFICIAL** means the Chief Building Official of the Town as appointed by by-law of the Council.
- (g) **CLERK** means the Clerk of the Town.
- (h) **COMMISSION** means the applicable local governing hydro-electric commission located in the Town.
- (i) **CONSTRUCTION LIEN ACT** means the *Construction Lien Act*, R.S.O. 1990, c.C. 30, as amended, and all regulations thereto.

- (z) **MUNICIPAL ACT** means the *Municipal Act*, S.O. 2001, c.25, as amended, and all regulations thereto.
- (aa) **ONTARIO LAND SURVEYOR** shall mean a surveyor commissioned by the Province of Ontario and qualified to establish monuments that define the boundaries of a parcel or parcels of land and to prepare all necessary reference plans and surveys for the purpose of the Agreement.
- (bb) **OWNER** means the applicant for a Building Permit for one of the Lots and includes the person on whose behalf an application for a Building Permit is made.
- (cc) **PLANNING ACT** means the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, and all regulations thereto.
- (dd) **PLANS** shall mean all drawings, plans, specifications, contracts and other documents providing for the installation, construction and erection of the Works approved by and filed in the office of the Director prior to execution of this Agreement by the Town.
- (ee) **PRIMARY SERVICES** means all private utilities and all municipal services including, without restricting the generality of the foregoing, storm sewers, sanitary sewers, sidewalks, fencing, watermain, roads (including base coarse asphalt and curbs and gutters), street lighting and drainage works and swales and/or such other works as detailed in Schedule "D" (Financial Obligations) attached to and forming part of this Agreement.
- (ff) **PRIVATE UTILITIES** means telephone, hydro electric systems and natural gas systems and cable television systems.
- (gg) **REGION** means The Regional Municipality of Niagara.
- (hh) **REGIONAL PUBLIC WORKS DEPARTMENT** means the Region's Public Works Department.
- (ii) **SECONDARY SERVICES** means all works to be installed, constructed, or erected which are not Primary Services or private utilities and/or such other works as detailed in Schedule "D" (Financial Obligations) attached to and forming part of this Agreement.
- (jj) **SECTION**, when used in reference to a numbered part of the Agreement, means:
  - (i) a complete section including all its sections and subsections;
  - (ii) a particular subsection including its subsections; and
  - (iii) a particular subsection as the context may dictate or require.
- (kk) **STREET** means street as defined in the Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (ll) **STREET LINE** means Street Line as defined in Town's Zoning By-law No. 1136 (1987), as amended, or any successor thereto.
- (mm) **SUPERVISION** means the full-time inspection and scrutiny of all Works for the express purpose of enforcing the provisions of this Agreement and certifying that the Works have been performed and completed to Town standards in the form prescribed for this purpose and "SUPERVISE" means to carry out such Supervision.
- (nn) **TREASURER** means the Director of Financial Services of the Town.
- (oo) **UTILITY SERVICES** means physical plant including but not limited to pipes, valves, conduits, cables, terminals, transformers, etc. owned and operated by communications, television, hydro, gas and oil companies or any other utility companies.

- (k) The Developer shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative or other tribunal the right of the Town to enter into this agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the Town in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.
- (l) Time shall be of the essence of this agreement.
- (m) In the event that a Mortgagee(s) exercises any rights as to sale, possession or foreclosure or takes any other steps to enforce its security against the Lands then such Mortgagee(s) agrees on behalf of itself, its heirs, executors, administrators, successors and assigns not to deal with the Lands as a development or part thereof unless and until a new agreement in the same form, mutatis mutandis, as this Agreement has been entered into with the Town.
- (n) The Developer shall notify or cause to be notified, each and every purchaser of a Lot or Lots within the Development Plan, of all Works contracted by the Developer, the Developer's obligations to maintain the Works and all other conditions covered by this Agreement and shall cause such information to be fully recorded in any offer to purchase or agreement for sale entered into by the Developer.
- (o) The Developer shall pay, before final approval of the Development Plan is requested, all arrears of taxes and all taxes for the current year owing in respect of the Lands and the Buildings situate thereon.
- (p) The Developer shall commute and pay to the Town before final approval of the Development Plan is requested any and all Local Improvement rates assessed against the Lands.
- (q) The Town shall cause this Agreement to be Registered against the title to the Lands and at its option against the title to every Lot shown on the Development Plan.
- (r) If, after this agreement is executed, the Town, the Ministry of the Environment, the Ministry of Natural Resources, the Minister of Housing or the Region shall impose any further condition or requirement which is not contained herein, then the Developer shall forthwith upon demand enter into such further Agreement or give such further assurances as the Town may require and the Developer shall not contravene any condition or requirement of the Minister of Housing or the Region notwithstanding that the same is not contained herein.
- (s) The Developer shall cause the final Development Plan, as approved by the Town of Pelham, to be registered within thirty (30) days after its approval.
- (t) The Developer shall reimburse the Town for all fees and disbursements incurred by it in connection with the preparation, approval, execution and registration of this Agreement and all related documentation in connection with the preparation and enactment of any by-law or registration of any subsequent Agreements which may be required to implement this Agreement.
- (u) All Streets and properties abutting on the Development Plan or used for access to the Lands during the installation or construction of the Works or during the construction of Buildings upon the Lots shall, at all times, be kept in a good, clean and useable condition and, if damaged or littered, shall be restored immediately to the Town's requirements.
- (v) All trucks making deliveries to or taking materials from the Lands included within the Development Agreement shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting Streets or properties.

- (xiii) on the completion of the installation or construction of the works, to supply the Town with a certificate, in form satisfactory to the Director, that the works were installed or constructed in accordance with the approved plans and specifications;
  - (xiv) provide the Director with individual record sheets for all sewer and water service locations and depths;
  - (xv) accompany the Director on a final inspection of the works at the conclusion of the maintenance period herein specified and before the assumption of the works by the Town;
  - (xvi) supervise the construction of any remedial work which the Director may direct;
  - (xvii) provide building levels for construction purposes as hereinafter provided;
  - (xviii) furnish the Director with the preliminary lot grading certificate for each Lot for which an application for a building permit is made; and
  - (xix) provide the Town with the final lot grading certificate for each lot.
- (b) The Developer shall not install Works prior to the receipt by it in writing of the approval of the Director of the detailed Plans and specifications therefor.
  - (c) All of the works to be installed or constructed under this Agreement shall be installed or constructed under the direct supervision of the Developer's Consulting Engineer at the expense of the Developer.

5. **CONSTRUCTION OF WORKS**

The Developer agrees to construct and pay the whole cost of such construction and materials required for all of the works referred to in this Agreement and the Schedules attached, and in accordance with the conditions and specifications contained in said Agreement and Schedules.

6. **CONTRACTORS**

Before commencement of any works, the Developer shall show satisfactory proof to the Director, that the proposed contractors or sub-contractors, whom the Developer has retained to construct works described in this Agreement, or any part of the works, have sufficient and valid liability insurance policies, indicating that the Town and its agents and servants are named insured; a certificate from the Workers' Safety Insurance Board showing that the contractor is in good standing; and satisfactory evidence that the contractor is qualified, experienced and has adequate equipment to successfully complete the Works. Any contractor employed by the Developer shall, as a condition of such employment, be approved by the Director.

7. **WATER SUPPLY**

- (a) Water laterals have already been installed.
- (b) The location of the water service laterals shall be illustrated on the Site Servicing Plans including restoration of affected road and boulevard surfaces. The Site Servicing Plans shall be attached to this Agreement as Schedule "B".

8. **SANITARY SEWERS**

- (a) Sanitary laterals have already been installed.
- (b) Domestic waste from any building constructed on any Lot shall be discharged into the sanitary sewer system through a drain connected to the

native varieties as listed in the "Native Species of Niagara Planting Guide" published by Land Care Niagara and approved by the Town; (Black Maple, Basswood, Red Oak, Pin Oak)

In accordance with Schedule "D" affixed hereto, prior to execution of this Agreement by the Town, the Owner shall post with the Town security for the planting of trees at the rate of three-hundred dollars (\$300.00) per tree to be planted.

The Owner shall be solely responsible for acquiring and planting trees in accordance with the terms of this Agreement and delivering written notice to the Town that such work has been completed.

Provided, however, that in the event the Owner does not plant trees in accordance with the provisions of this Agreement or within the prescribed time or to the complete satisfaction of the Director then the Town may, at its sole discretion, plant or replace or replant trees in accordance with the provisions of this Agreement and apply the above mentioned security against the Town's costs and/or collect such costs in like manner as municipal taxes.

**13. SECURITY DEPOSITS AND REFUNDS**

The Developer shall be responsible for the full amount of the cost for the design, servicing and maintenance of the Development Plans together with all Town administrative and consulting fees and legal costs and shall be required to post security, in a form satisfactory to the Town, on accounts of aforesaid costs, charges and fees in accordance with Schedule "D" affixed hereto prior to execution of this Agreement by the Town.

Security to be posted for Services and to cover the Town administrative, engineering and legal costs shall be calculated on the basis of the Developer's estimated cost of design, construction and maintenance of all Works as set out in Schedule "D" annexed hereto.

**(a) CASH PAYMENTS**

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 Developer shall, in accordance with Schedule "D" annexed hereto, deposit with the Town the following non-refundable cash amounts:

- (i) a cash amount to secure the Town's engineering, administrative consulting and legal costs for this Agreement, approval of the Plans, and enactment of by-laws calculated on the following basis:
  - (1) where the Cost of Construction of all Works is less than fifty thousand dollars (\$50,000.00), the charge shall be two thousand five hundred dollars (\$2,500.00);
  - (2) where the Cost of Construction of all Works is in excess of fifty thousand dollars (\$50,000.00), the charge shall be two thousand five hundred dollars (\$2,500.00) plus five percent (5.0%) of the costs exceeding fifty thousand dollars (\$50,000.00);
- (ii) a cash amount to cover all arrears of taxes, all taxes for the current year and all current Local Improvement charges assessed against the Lands; and

**(b) LETTERS OF CREDIT**

- (i) Before commencing any of the Works provided for in this Agreement, the Developer 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

15. **MAINTENANCE GUARANTEE**

- (a) The Letter of Credit deposited by the Developer pursuant to Section 13 hereof may, upon the completion of the Primary Services, and prior to the assumption of the Primary Services by the Town, at the Director's discretion, be reduced to an amount equal to ten percent (10%) of the completed Works (Schedule "D") plus one hundred and twenty per cent (120%) of the value, as estimated by the Director, of any uncompleted Secondary Services and such Letter of Credit shall be retained by the Town as a Maintenance Guarantee to guarantee the workmanship and materials of the Works until such time as the Works are completed.
- (b) The Maintenance Guarantee as required under subsection 15(a) hereof, may be reduced further to five percent (5%) subject to the Developer meeting all requirements of the *Construction Lien Act*.
- (c) The Letter of Credit may be realized upon by the Town if the Developer defaults in any payment or condition contained herein.
- (d) The Developer shall be conclusively deemed to be in breach of the covenant contained in Section 15(c), if, in the case of the cost of the Works or the fees of the Developer's Consulting Engineer and the Ontario Land Surveyor, a lien against the Lands or any part thereof is preserved pursuant to the *Construction Lien Act* and if, in the case of any other payment required to be made under this Agreement, a notice to that effect is forwarded to the Developer by the Director in accordance with Section 23 hereof.

16. **CASH-IN-LIEU OF PARKLAND DEDICATION**

Prior to the issuance of a building permit, the Owner agrees to pay five percent (5%) of the value of the lands to the Town in lieu of lands for parks purposes pursuant to the provisions of Subsection 42(6) of the *Planning Act*. The Developer shall have the Lots appraised by a qualified appraiser to determine the value of each Lot pursuant to Subsection 42(6) the *Planning Act*. Such appraisal is valid for a period of twelve (12) months, after such period the Town may, at its sole discretion, require an updated appraisal.

17. **INHIBITING ORDER ON THE LANDS**

The Developer shall not transfer or otherwise deal with the Lands or any part thereof and also acknowledges and agrees that the Town will register an inhibiting order pursuant to the *Land Titles Act*, R.S.O. 1990, c.L.5, preventing transfer of all or any part of the Lands until such time as the Director has issued the Completion Certificate for Primary Services for the Lands. The Developer also acknowledges that the Town may register an inhibiting order against all or any part of the Lands for other matters to ensure compliance with this Agreement.

18. **DEFAULT**

- (a) Upon breach by the Developer of any covenant, term, condition or requirement of this Agreement, or upon the Developer becoming insolvent or making an assignment for the benefit of creditors, the Town, at its option, may declare that the Developer is in default.
- (b) Notice of such default ("Notice of Default") shall be given by the Town and if the Developer does not remedy such default within such time as provided in the notice, the Town may declare that the Developer is in final default under this Agreement and shall then forthwith give notice of final default ("Notice of Final Default") thereof to the Developer.
- (c) Upon Notice of Default having been given, the Town may require all work by the Developer, their servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default)



are subject to the payment of development charges which are payable prior to the issuance of a building permit."

- (c) The Developer acknowledges and hereby agrees to insert into all offers and agreements of purchase and sale the following clause: "The lands in the Plan are subject to the payment of cash-in-lieu of the dedication of land for park purposes prior to the issuance of a building permit."

**22. INDEMNIFICATION**

Until the expiration of the Maintenance Guarantee, the Developer, on behalf of itself, its successors and assigns, including its successors in title of the Lands in the Development Plan, 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 on the Plan 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 shown on the Plan 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 on the Plan, however caused.

**23. COVENANTS THAT RUN WITH THE LAND**

- (a) The Developer and the Town acknowledge and agree that it is their intent that all the terms, conditions and covenants contained herein shall be covenants that run with the land and that the burden of such covenants shall be binding upon the Developer, their successors and assigns, and successors in title, from time to time, of the Lands described in Schedule "A" of this Agreement and any part or parts thereof and that the benefits of the said covenants shall enure to the Town, its successors and assigns in title of all roads, Streets and public lands forming part of or abutting on the Lands described in Schedule "A".
- (b) The Developer agrees that it shall, upon the sale or transfer by it of the Lands Included within the Development Plan or any part or parts thereof, require the Purchaser or Transferee thereof as a condition of such sale or transfer to execute an Agreement satisfactory in form to the Town's Solicitor, agreeing to assume this Agreement and to be bound by and fulfil all of the terms, conditions and covenants herein set forth and containing a like covenant to this effect. The said Assumption Agreement shall be executed by the Town, the Developer and any such Purchaser or Transferee and may, at the Town's option, be registered upon title. Provided, however, that such Assumption Agreement shall not be required for the sale or transfer of a Lot as shown on the Development Plan for the purpose of construction.

**24. NOTICE**

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 to

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

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Stacey Wells  
Witness  
Stacey Wells  
(Print Name)

Stacey Wells  
Witness  
Stacey Wells  
(Print Name)

KEITH JOHN MCVETTY  
Keith John McVetty  
Keith John McVetty  
(Print Name)

PATRICIA MARY MCVETTY  
Patricia M. McVetty  
Patricia M. McVetty  
(Print Name)

THE CORPORATION OF THE TOWN OF PELHAM

Dave Augustyn  
Dave Augustyn, Mayor

Cheryl Mickle  
Cheryl Mickle, Clerk