

**Properties**

**PIN** 64035 - 0092 LT  
**Description** PT LT 12 CON 6 PELHAM PT 1, 2 & 3 59R4007, S/T INTEREST IN RO411194; S/T PE12003; PELHAM  
**Address** 1732 CREAM ST  
FENWICK

**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, ON L0S 1E0

I, Dave Augustyn, Mayor and Nancy J. Bozzato, Town Clerk, have the authority to bind the corporation.

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

**Statements**

This notice is pursuant to Section 71 of the Land Titles Act.

This notice is for an indeterminate period

Schedule: See Schedules

**Signed By**

Monica Evelyn Wolfe	39 Queen St. P.O. Box 24022 St. Catharines L2R 7P7	acting for Applicant(s)	Signed	2015 07 10
<b>Tel</b>	9056881125			
<b>Fax</b>	9056885725			

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

DANIEL & PARTNERS LLP	39 Queen St. P.O. Box 24022 St. Catharines L2R 7P7	2015 07 13
<b>Tel</b>	9056881125	
<b>Fax</b>	9056885725	

**Fees/Taxes/Payment**

<b>Statutory Registration Fee</b>	\$60.00
<b>Total Paid</b>	\$60.00

**File Number**

**Applicant Client File Number :** 43029

THIS AGREEMENT made this <sup>9th</sup> ~~24th~~ day of <sup>June</sup> ~~April~~ 2015.

BETWEEN:

**THE CORPORATION OF THE TOWN  
OF PELHAM**  
(Hereinafter called the "Town")

-and-

**BERNADETTE MARY COYNE**  
(Hereinafter called "the Owner")

**WHEREAS** the Owner represents that they are the registered owners of lands located in the Town of Pelham, in the Regional Municipality of Niagara municipally known as 1732 Cream Street legally described as PIN 64035 - 0092(LT) Part Lot 12, Concession 6 Pelham being Parts 1, 2 & 3 on Reference Plan 59R - 4007 (the "Property") on which an existing single family residence known as the "Comfort House" is located;

**AND WHEREAS** the Owner wishes to construct a new residence on the Property (the "New Residence") and intends to reside in the Comfort House until such time as the New Residence has been completed and the Town has permitted occupancy of the New Residence;

**AND WHEREAS** the Owner has agreed to co-operate with the Town to obtain designation of the Comfort House pursuant to Part IV of the *Ontario Heritage Act*, R.S.O.1990 c.O.18 as amended to ensure its preservation;

**AND WHEREAS** in the event that the Comfort House is designated as being of cultural heritage value pursuant to section 29 of the *Ontario Heritage Act* the Owner has agreed to apply for and obtain a change of use permit from the Town to convert the Comfort House from a residence to an accessory structure prior to occupancy of the New Residence;

**AND WHEREAS** in the event that the Comfort House is not designated as being of cultural heritage value pursuant to section 29 of the *Ontario Heritage Act* prior to the Town having permitted occupancy of the New Residence, the Comfort House shall be demolished by the Owner;

**AND WHEREAS** the Town requires the Owner to enter into this agreement in order to permit the Owner to reside in the Comfort House during construction of the New Residence and to provide for both the heritage designation of the Comfort House and the change of use of the Comfort House to an accessory building and for the possible demolition of the Comfort House;

**AND WHEREAS** the parties agree that no occupancy permit will be issued for the New Residence until such time as the Comfort House has been designated pursuant to Section 29 of the *Ontario Heritage Act*.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises, and the sum of One Dollar (\$1.00) of lawful money of Canada now paid by the Owner to the Town, the receipt of which monies is hereby acknowledged, the parties hereto do mutually covenant and agree as follows:

**1. BUILDING PERMIT**

Within sixty (60) days of the date of execution of this Agreement, the Owner shall apply to the Chief Building Official for the Town for a building permit with respect to the New Residence to be constructed on the Property. The Owner acknowledges that the Town is not obligated to issue a building permit unless the Owner has complied with all laws, by-laws and other requirements for the issuance of a building permit.

**2. COMMENCEMENT OF CONSTRUCTION**

The Owner shall commence the construction of the residence on the Property within sixty (60) days of the date of issuance of the building permit and shall obtain an occupancy permit from the Town within eighteen (18) months of the date of this Agreement. In the event that an occupancy permit is not obtained within eighteen (18) months the Town may at its own discretion extend this requirement for an additional four (4) months by providing the Owner with written notice of the extension of time as provided for in paragraph 9 of this Agreement.

**3. HERITAGE DESIGNATION OF THE COMFORT HOUSE**

The Owner agrees to co-operate fully with the Town in having the Comfort House designated by municipal by-law as being of cultural heritage value pursuant to section 29 of the *Ontario Heritage Act*. The Owner agrees to assist the Town in the preparation of its report and background study to Town Council with respect to the heritage designation of the Comfort House, and further agrees to grant the Town access to the Comfort House upon provision of written request at least 72 hours prior the date of the requested access. The Owner covenants and agrees that she shall not object to the proposed heritage designation of the Comfort House by the Town.

**4. CHANGE OF USE PERMIT/ DEMOLITION**

The Owner agrees that in the event that the Comfort House is designated as being of cultural heritage value pursuant to section 29 of the *Ontario Heritage Act* prior to the owner obtaining an occupancy permit with respect to the New Residence, the Owner

shall apply for and obtain from the Town a Change of Use Permit with respect to the Comfort House which shall convert the Comfort House from a residence to an accessory building and all kitchen facilities (including the sink and all kitchen appliances and associated electrical outlets) shall be removed from the Comfort House.

The Town and the Owner agree that in the event that the Town has not completed the heritage designation of the Comfort House prior to the completion of construction of the New Residence or in the event that the Change of Use Permit is not granted by the Town, the Owner shall apply to the Chief Building Official for the Town for a demolition permit with respect to the Comfort House. The Owner acknowledges that the Town is not obligated to issue a demolition permit unless the Owner has complied with all laws, by-laws and other requirements for the issuance of a demolition permit. The Owner agrees that she shall not object in any way to the requirement of demolition of the Comfort House should this be required by the Town.

The Owner shall complete the demolition of the Comfort House including the removal of all materials from the Property and the filling of any excavations made on the Property in accordance with the requirements of the demolition permit issued by the Town within twenty (20) days of the issuance of the demolition permit by the Town.

#### **5. SECURITY**

Upon the execution of this Agreement the Owner shall provide the Town with either a bank draft or an irrevocable letter of credit in the amount of Fifteen Thousand Dollars (\$15,000.00) as security for the completion of their obligations pursuant to paragraphs 3 and 4 of this Agreement (the "Security").

#### **6. DEFAULT**

In the event of any default by the Owner with respect to the provisions paragraph 3 and 4 of this Agreement, in addition to any other remedies available to the Town, the Town may:

- (1) Act as agent for the Owner to apply for and obtain a Change of Use permit to convert the Comfort House to an accessory building;
- (2) Proceed with the designation of the Comfort House pursuant to Section 29 of the *Ontario Heritage Act*;
- (3) Obtain a demolition permit and demolish the Comfort House; and
- (4) Recover from the Security all costs and expenses incurred by the Town, whether directly or indirectly, with respect to the Change of Use permit, the

heritage designation of the Comfort House or the demolition of the Comfort House.

The Owner authorizes the Town, in the event of the breach of the provisions of paragraph 3 or 4 of this Agreement, to enter the Property and the Comfort House in relation to the restoration of the breach and to take all steps that are necessary in response to such breach.

#### **7. REGISTRATION OF AGREEMENT ON TITLE**

The Owner agrees that this Agreement shall be registered on title to the Property and authorizes the Town to attend to registration of the Agreement. The Owner agrees to sign any further documents required to permit the registration of the Agreement on title to the Property.

#### **8. RELEASE OF SECURITY**

Upon certification by the Clerk for the Town that all conditions imposed by this Agreement have been satisfied, the Owner shall be entitled the return of the Security from the Town.

#### **9. GENERAL**

- (1) The Owner acknowledges that where this Agreement requires the Owner to perform any work or do anything, it is done at the Owner's sole expense.
- (2) The Owner consents to the registration of this Agreement on title to the Property at the Owner's expense.
- (3) The parties covenant and agree that this Agreement shall be binding upon them, their respective heirs, executors, administrators, successors and assigns.
- (4) All notices provided for pursuant to this Agreement shall be made in writing as follows:
  - (a) if made to the Town, shall be addressed to the Clerk, Town of Pelham, at 20 Pelham Town Square, Fonthill, Ontario L0S 1E0;
  - (b) if made to the Owner, shall be addressed to Bernadette Mary Coyne, 657 Tice Road, Fenwick, Ontario L0S 1C0

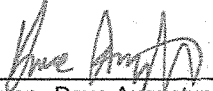
And to: Jill Anthony, Barrister and Solicitor  
10 Highway 20 East, Box 743 Fonthill, ON L0S 1E0

All notices shall be deemed to have been properly given if delivered personally or sent by registered mail. If notice is given by mail, the same shall be effective 4 business days of being mailed.

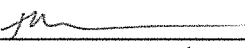
- (5) The Owner agrees that the full costs of preparation of this Agreement and the registration of the Agreement on title to the Property shall be paid by the Owner.

IN WITNESS WHEREOF the parties have set their hands and seals.

THE CORPORATION OF THE TOWN  
OF PELHAM

  
\_\_\_\_\_  
Mayor - Dave Augustyn

  
\_\_\_\_\_  
Town Clerk Nancy Bozzato

  
\_\_\_\_\_  
Witness: Terrence Alaver

  
\_\_\_\_\_  
Owner - Bernadette Mary Coyne

THIS AGREEMENT made this <sup>9<sup>th</sup></sup> ~~20<sup>th</sup>~~ day of April, 2015.

BETWEEN:

**THE CORPORATION OF THE TOWN  
OF PELHAM**  
(Hereinafter called the "Town")

-and-

**BERNADETTE MARY COYNE**  
(Hereinafter called "the Owner")

**WHEREAS** the Owner represents that they are the registered owners of lands located in the Town of Pelham, in the Regional Municipality of Niagara municipally known as 1732 Cream Street legally described as PIN 64035 - 0092(LT) Part Lot 12, Concession 6 Pelham being Parts 1, 2 & 3 on Reference Plan 59R - 4007 (the "Property") on which an existing single family residence known as the "Comfort House" is located;

**AND WHEREAS** the Owner wishes to construct a new residence on the Property (the "New Residence") and intends to reside in the Comfort House until such time as the New Residence has been completed and the Town has permitted occupancy of the New Residence;

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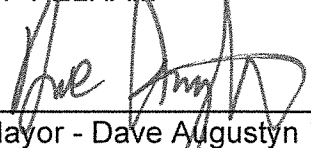
And to: Jill Anthony, Barrister and Solicitor  
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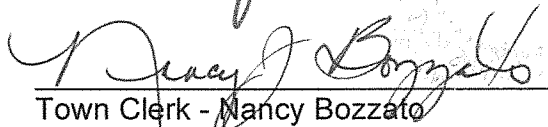
All notices shall be deemed to have been properly given if delivered personally or sent by registered mail. If notice is given by mail, the same shall be effective 4 business days of being mailed.


- (5) The Owner agrees that the full costs of preparation of this Agreement and the registration of the Agreement on title to the Property shall be paid by the Owner.

IN WITNESS WHEREOF the parties have set their hands and seals.

THE CORPORATION OF THE TOWN  
OF PELHAM

  
\_\_\_\_\_  
Mayor - Dave Augustyn

  
\_\_\_\_\_  
Town Clerk - Nancy Bozzato

  
\_\_\_\_\_  
Witness: Terrance Glover

  
\_\_\_\_\_  
Owner - Bernadette Mary Coyne

## Issue Summary Report

### 5.3.1. Request for Temporary Use of (possibly historic) Dwelling While a Replacement Dwelling is Constructed.

#20150319003

**Meeting :** COW-09/2015 - Regular Committee of the Whole

**Section :** Community Planning & Development

**Meeting Date :** 2015/04/07 19:30

**Meeting Type :** Committee of the Whole

#### Executive Summary

The owner of 1732 Cream Street wishes to improve the property by replacing the current home (ie. the Comfort Home) with a newer model. This property is associated with the historically designated 'Comfort Maple' tree, being the tree's respective homestead.

#### Background

The owner of 1732 Cream Street (Attachment #1 - Location Map) wishes to improve the property by replacing the current home (ie. Comfort Home) with a newer model. This property is associated with the 'The Comfort Maple' tree. It is planning staff's understanding that the owner wishes to continue renting the existing dwelling (Comfort Home) while a new home is constructed on the same lot.

On the advice of the Town's Heritage Committee (January 22, 2015), the Comfort Home is suspected of being a historic structure due to its age and connection with the Comfort Maple tree. To confirm this, a review of the dwelling's historic importance will be completed by the Town (as part of the historic property review project), or by the Owner if timing becomes a concern.

The Greenbelt Plan, Regional Official Plan, Town of Pelham Official Plan, and Zoning By-law do not currently permit two (2) dwellings on this lot; However given that the Comfort Home may have historic significance (yet to be determined), the Owner has agreed (Attachment #2) to enter into an agreement (Attachment #3) to ensure conformity with the respective policies. The owner has also agreed (Attachment #3 & #4) to be responsible for all costs.

To accomplish policy conformity, the 'Comfort Home' must either be designated as an historic structure (under the Heritage Act), and obtain a change of use permit from the Town (to convert the Comfort Home dwelling to an accessory structure), or be demolished if confirmed as not being historically significant.

Although this process of designating the building as a historic structure and requiring a change of use permit is atypical, this approach is necessary to ensure the retention of a possible historic structure under the current policies. This approach is an example of the Town's current philosophy to "Roll Out the Red Carpet, and Roll Up the Red Tape", since without this approach the (possibly) historically significant Comfort Home would be lost.

In addition, prior to the development of the new dwelling, both Regional and Conservation Authority approvals are required to locate a proper development envelope.

If this approach is ultimately approved by Council, the owner will be permitted to rent/reside in the Comfort Home until the new dwelling receives occupancy permit and a change of use permit is issued, at which time only one dwelling will exist and/or be occupied on the property.

#### Alternatives

Committee may choose to not recommend approval of this proposal to Council.

## Recommendation

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THAT Committee RECEIVES Issue Sheet #20150319003, "Request for Temporary Use of (possible Historic) Dwelling while a Replacement Dwelling is Constructed";

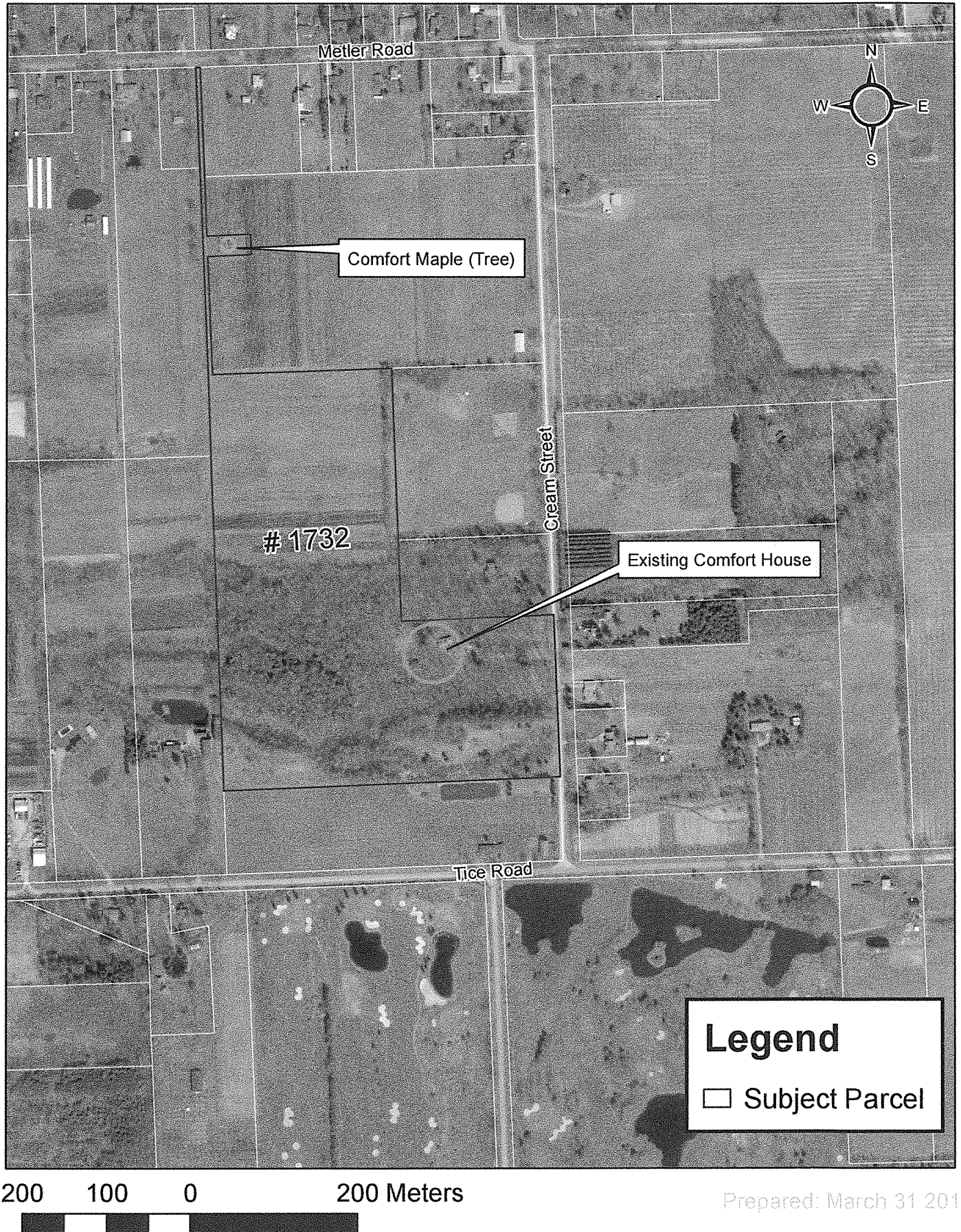
AND FURTHER THAT, Committee RECOMMEND Council approve the course of action as described in this report and authorize the Mayor and Town Clerk to enter a Development Agreement that will ensure either the removal of the existing dwelling at 1732 Cream Street, or protection of the existing dwelling under the Heritage Act and change of use provision of the Building Code once the new home is ready for occupancy.

## Additional Information

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4. c) Financial Implications : None

## Location Map: 1732 Cream Street



**JILL C. ANTHONY** PROFESSIONAL CORPORATION  
LAW OFFICE

March 31, 2015

DELIVERED BY EMAIL

Town of Pelham  
20 Pelham Town Square  
PO Box 400  
Fonthill, Ontario  
L0S 1E0

Attention: Terrance Glover

Dear Sir:

Re: 1732 Cream Street

I advise on behalf of Bernadette Coyne that she accepts the conditions in the draft agreement as provided by the Town of Pelham and she fully intends to move forward with the signing of same once it is approved by resolution of the Committee.

If you have any questions or require any further information, please contact me.

Yours very truly,

  
Jill C. Anthony  
JCA:tf

10 Highway 20 East, Box 743,  
Fonthill, ON L0S 1E0  
Tel. 905.892.2621 Fax. 905.892.1022

Pio Plaza, 8685 Lundy's Lane, Unit 2  
Niagara Falls, ON L2H 1H5  
Tel. 289.296.2629 Fax. 289.296.0222



THIS AGREEMENT made this       day of March, 2015.

BETWEEN:

**THE CORPORATION OF THE TOWN  
OF PELHAM**  
(Hereinafter called the "Town")

-and-

**BERNADETTE MARY COYNE**  
(Hereinafter called "the Owner")

**WHEREAS** the Owner represents that they are the registered owners of lands located in the Town of Pelham, in the Regional Municipality of Niagara municipally known as 1732 Cream Street legally described as PIN 64035 - 0092(LT) Part Lot 12, Concession 6 Pelham being Parts 1, 2 & 3 on Reference Plan 59R - 4007 (the "Property") on which an existing single family residence known as the "Comfort House" is located;

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- (4) Recover from the Security all costs and expenses incurred by the Town, whether directly or indirectly, with respect to the Change of Use permit, the

heritage designation of the Comfort House or the demolition of the Comfort House.

The Owner authorizes the Town, in the event of the breach of the provisions of paragraph 3 or 4 of this Agreement, to enter the Property and the Comfort House in relation to the restoration of the breach and to take all steps that are necessary in response to such breach.

#### **7. REGISTRATION OF AGREEMENT ON TITLE**

The Owner agrees that this Agreement shall be registered on title to the Property and authorizes the Town to attend to registration of the Agreement. The Owner agrees to sign any further documents required to permit the registration of the Agreement on title to the Property.

#### **8. RELEASE OF SECURITY**

Upon certification by the Clerk for the Town that all conditions imposed by this Agreement have been satisfied, the Owner shall be entitled the return of the Security from the Town.

#### **9. GENERAL**

- (1) The Owner acknowledges that where this Agreement requires the Owner to perform any work or do anything, it is done at the Owner's sole expense.
- (2) The Owner consents to the registration of this Agreement on title to the Property at the Owner's expense.
- (3) The parties covenant and agree that this Agreement shall be binding upon them, their respective heirs, executors, administrators, successors and assigns.
- (4) All notices provided for pursuant to this Agreement shall be made in writing as follows:
  - (a) if made to the Town, shall be addressed to the Clerk, Town of Pelham, at 20 Pelham Town Square, Fonthill, Ontario L0S 1E0;
  - (b) if made to the Owner, shall be addressed to Bernadette Mary Coyne, 657 Tice Road, Fenwick, Ontario L0S 1C0

And to: Jill Anthony, Barrister and Solicitor  
10 Highway 20 East, Box 743 Fonthill, ON L0S 1E0

All notices shall be deemed to have been properly given if delivered personally or sent by registered mail. If notice is given by mail, the same shall be effective 4 business days of being mailed.

- (5) The Owner agrees that the full costs of preparation of this Agreement and the registration of the Agreement on title to the Property shall be paid by the Owner.

IN WITNESS WHEREOF the parties have set their hands and seals.

THE CORPORATION OF THE TOWN  
OF PELHAM

\_\_\_\_\_  
Mayor - Dave Augustyn

\_\_\_\_\_  
Town Clerk - Nancy Bozzato

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Owner - Bernadette Mary Coyne

## Appendix 4 for 5.3.1.: Coyne Letter

February 9, 2015

Terrance W. Glover  
Director of Community Planning & Development  
Town of Pelham  
20 Pelham Town Square  
Fonthill, ON L0S 1E0

Dear Mr Glover:

RE 1732 Cream Street

This property is currently occupied by an approximately 200 year old single detached dwelling that is known locally as the Comfort House. As you know, the property is also home to the Comfort Maple, the oldest Sugar Maple in Canada.

As described previously, we are proposing to construct a new dwelling to the south and east of the existing dwelling on the south side of the woodlot. As discussed, both the Ministry of Natural Resources and the Niagara Peninsula Conservation Authority have already identified an appropriate building envelope in this area.

As noted previously, we are agreeable to working with the Heritage Committee and Council to obtain designation of the existing dwelling as a Heritage building to ensure its preservation. Understanding that only one dwelling is permitted on one lot, we agree that prior to completion of the new dwelling and the issuance of an occupancy permit, we will obtain a Change of Use Permit to convert the existing dwelling to an accessory structure.

In order to address the unlikely situation that Council has not been able to complete the Heritage designation process at the time that construction of the new dwelling is complete, we respectfully request that the Agreement contain a clause allowing the continued existence of the Comfort House until such time as the designation process is complete. We fully understand that in this situation the Comfort House could not be used for residential purposes and that we would need to obtain a Change of Use Permit to facilitate the Town's approval of the conversion.

Assuming that this proposal is acceptable to the Town, we are prepared to enter the appropriate Agreement with the Town on terms and conditions addressing the construction of a new dwelling as well as the conversion and preservation of the Comfort House.

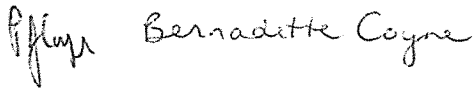
We understand that the Town will arrange for its Solicitor to prepare the necessary Agreement and that we will be responsible for the costs associated with the preparation. We also understand that said Agreement will be provided to us for review in advance of presentation to Council for approval.

For your information, the property is legally described as part of Lot 12, Concession 6, in the former Township of Pelham, now Town of Pelham. The title of the property is registered under the name of Bernadette Mary Coyne

Thank you in advance for your assistance and cooperation in this matter, it has been most appreciated. Please do not hesitate to contact me should you have any questions or require additional information.

Appendix 4 for 5.3.1.: Coyne Letter

Sincerely,

 Bernadette Coyne

Paul and Bernadette Coyne  
905-892-5478  
pcoyne@hotmail.com