

**DATE:** July 17, 2023

**REPORT NO:** PD-38-2023

**SUBJECT:** Information Report - Application to Superior Court – Natural Severance Application between Evelyn and Jeff Duck and his Majesty the King in Right of Ontario as represented by MNDMRF, and Royal Bank of Canada – Application of Beds of Navigable Waters Act

**CONTACT:** Brian Treble, Director of Planning & Building

**OVERVIEW:**

- Application for a natural severance has been submitted for Pt Lot 2, Range Road 2 former Township of South Grimsby, now Township of West Lincoln being a 18.553 hectares (45.85 acres) property split into approximately 7.672 hectares (18.96 acres) on the north side and 10.881 hectares (26.9 acres) on the south side, given the location of North Creek.
- The Beds of Navigable Waters Act required a survey be completed and evidence be provided that the creek was navigable at the time of the conveyance from the Crown in 1805. See attachments 1 and 2 to this report.
- Historically this property has existed as one 45.85 acre parcel since the 1950s at 7395 Twenty Road.
- The buildings have been situated on the south side of the creek since the early 1900s, with additions and renovations done over the years.
- The current application under the Beds of Navigable Waters Act proposes to declare that the natural channel results in a natural severance.
- Township staff have reviewed the file as circulated by the Province. Township staff and Legal Counsel support the original location of the bed of North Creek and recognize, based on Provincial input that the bed acts as a natural severance by nature of the bed of the original creek remaining in the ownership of the Crown.
- This means, should the Court support the application that the properties are conveyable. However, building permits will not be available as it is not a lot for the purposes of the Zoning By-law.
- The Township of West Lincoln was not named as a party in this Hearing and therefore the Court does not seek a position from the Township on this matter.

## **RECOMMENDATION:**

That, Information Report PD-38-2023 regarding “Application to Superior Court – Natural Severance Application between Evelyn and Jeff Duck and his Majesty the King in Right of Ontario as represented by MNDRMF, and Royal Bank of Canada – Application of Beds of Navigable Waters Act” dated July 17, 2023, be RECEIVED for information purposes.

## **ALIGNMENT TO STRATEGIC PLAN:**

### **Strategic Priorities #2 & #3**

- **Champion** – strategic and responsible growth
- **Enrich** – our strong agricultural legacy

## **BACKGROUND:**

At least a dozen natural severances have proceeded to the Courts in the past decade with pressure for future such natural severance applications rising as natural severances are now one of the only remaining attempts to create lots in the agricultural area and as lots of record dwindle/disappear across the rural landscape.

It is widely known and understood that historic lot creation (retirement lots and/or surplus dwellings) results in more non-farmers living in the agricultural areas of the Township which has resulted in increased conflict with our farm community.

## **CURRENT SITUATION:**

Presently, Township staff and Legal Counsel have been reviewing an application under the Beds of Navigable Waters Act to use North Creek at Pt Lot 2 Range Road 2, on the north side of Twenty Road as a natural severance by providing evidence to the Court that the bed of the creek was never conveyed from the Crown dating back to the time of the Crown Patent in 1805.

In this case the Township was not served Notice, but was provided Notice by the Province through the Ministry of Natural Resources and Forestry. There may be some merit to the natural severance application since the 1876 Historical Atlas of Welland and Lincoln Counties shows and labels North Creek and provides evidence of development along the water.

Legal Counsel of the Township and the Province have discussed this application and have concluded that the bed of North Creek should be supported by the courts as owned by the Crown, as this represents the bed of the watercourse on the date of the Crown Patent in 1805 and the watercourse was likely navigable on that date. Therefore, title to the bed of the watercourse would remain with the Crown. A provincial position was confirmed by email on July 6, 2023 and is found at attachment 4 to this report.

This report is not written to suggest that the Township staff is opposed to the use of the Beds of Navigable Waters Act, but to show the significance of such declarations and how the natural consent determination affects land ownership, agricultural usage of the lands and pressures for non-farm development in the agricultural area. Township staff is appreciative of the fact that the Province provided the Township with Notice as per a

previous request, but is disappointed by the fact that the Township was not provided with Notice by the applicant in recognition of our interest in this matter. Township staff is pleased to be able to provide an opportunity for input into this application and are prepared to support such an application where it can be determined, on a case by case basis, that there is sufficient evidence to demonstrate that it is more likely than not that on the date of the Crown grant of the lands, the watercourse was navigable within the meaning of the Beds of Navigable Waters Act.

Further, staff have previously established some preliminary criteria to help evaluate this and all future applications. These include:

- a. Does documentation including past use and ownership confirm/substantiate the significance of a body of water in this location and its actual or potential use by the public as an aqueous highway;
- b. Does the historical Lincoln and Welland County atlas of 1876 indicate the feature and possible buildings on each side of the natural feature at that time;
- c. Is this legitimately an agricultural request or is the result of the creation of a non-farm residential building site in the country;
- d. Does the water course tributary have a known name;
- e. Amount of workable land area on each remnant parcel;
- f. Impact on municipal services including road maintenance; and
- g. Potential for future such natural severance declarations on this parcel or any surrounding parcels in the area.

Although this application does not meet all of these standards, a rezoning, will be required to comply with the definition of lot. A rezoning will be the time for an opportunity for the applicant to address any concerns including a desire for a building permit.

#### **FINANCIAL IMPLICATIONS:**

Limited Legal Counsel time has been incurred as this application has been reviewed with applicant's surveyor and Legal Counsel. Further, staff and Legal Counsel have worked jointly on the Township position and approach to determine how best to take a position on this application as well as on similar applications that the Township may receive in the future. Legal Counsel bills will be covered by the Planning Department Operating Budget.

Although both Legal Counsel and staff have been involved, Legal Counsel costs have been kept to a minimum.

#### **INTER-DEPARTMENTAL COMMENTS:**

This report has been discussed with Township Legal Counsel and our comments have been shared with Provincial Legal Counsel and staff as well.

#### **CONCLUSION:**

This application as currently submitted appears to be compliant with the Beds of Navigable Waters Act and can be supported by the Township of West Lincoln in its original natural location. A separate rezoning application will be required should development be anticipated and before a building permit can be issued.

**ATTACHMENTS:**

1. Application to Courts
2. Natural Severance Survey
3. Provincial Email of July 6, 2023


**Prepared & Submitted by:**



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**Brian Treble**  
**Director of Planning & Building**

**Approved by:**



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**Bev Hendry**  
**CAO**