

DATE: October 15, 2024

REPORT NO: PD-44-2024

SUBJECT: **Technical Report – Application for Zoning Bylaw Amendment - 7395 Twenty Road – Ross Robbins (File No. 1601-004-24)**

CONTACT: Madyson Ettl, Senior Planner

OVERVIEW:

- An application for a Zoning Bylaw Amendment has been submitted by Ross Robbins on behalf of the property owners, Jeffrey and Evelyn Duck to rezone a portion of 7395 Twenty Road, which has been naturally severed by North Creek.
- The intent of this rezoning application is to recognize the parcel of land north of the creek as a “lot” under the Township’s Zoning Bylaw, 2017-70 for the purposes of building, following a natural severance that was approved by the Ontario Superior Court of Justice on August 17th, 2024. The resulting parcels north and south of the creek do not meet the definition of a ‘lot’ as identified in the Township’s Zoning By-Law.
- This application also proposes a site specific exception to recognize the deficient lot area, being 7.5 hectares (18.53 acres) whereas, 40 hectares (98.84 acres) is identified as the minimum lot area permitted within an Agricultural ‘A’ zone, and to permit a deficient lot frontage of 44.3 meters whereas the zoning by-law required 100 meters.
- The applicants are also requesting an amendment to the Township’s zoning bylaw to permit a contracting business on the property as an on-farm diversified use.
- Planning Staff will prepare a Recommendation Report following input from the public meeting and any agency comments, and will be presented at a future Planning/ Building/ Environmental Committee or Council Meeting.

RECOMMENDATION:

1. That Technical Report PD-44-2024, titled “Technical Report – Application for Zoning Bylaw Amendment - 7395 Twenty Road – Ross Robbins (File No. 1601-004-24)”, dated October 15, 2024, be received; and,
2. That a Recommendation Report be submitted to a future Planning/Building/

Environmental Committee meeting once a full staff and agency review has been completed.

ALIGNMENT TO STRATEGIC PLAN:

Theme #2 & #3

- **Champion** – Strategic Responsible Growth
- **Enrich** – Strong Agricultural Legacy

BACKGROUND:

An application for a Zoning Bylaw Amendment has been made by Ross Robins on behalf of property owners, Jeffrey and Evelyn Duck to rezone a portion of 7395 Twenty Road which has been naturally severed through the Beds of Navigable Waters Act. The subject lands are located of South Grimsby Road 8 and north of North Creek.

The intent of this rezoning application is to recognize the parcel of land north of North Creek (Part 1 on the survey sketch found in Schedule F) as a “lot” for the purposes of building under the Township’s Zoning Bylaw 2017-70 following a natural severance that was approved by the Ontario Superior Court of Justice on August 17th 2024 (see Court Order found in Schedule C). The resulting parcels do not meet the definition of a ‘lot’ as identified in the Township’s Zoning By-Law 2017-70, as amended as the bylaw specifically states that parcels created by way of a severance for Navigable Waters are not “lots’ for the purposes of zoning.

The rezoning application is also requesting a reduced lot area and lot frontage as the naturally severed parcel does not meet the minimum lot area and frontage of the Township’s Zoning Bylaw.

The applicants submitted a number of studies and reports in support of the application including an archaeological assessment, Environmental Impact Assessment, Farm Business Plan, house plan, Planning justification report and the court decision regarding the natural severance.

CURRENT SITUATION:

Township Staff have reviewed the application to determine alignment with the relevant Provincial, Regional and Local policies.

Provincial Policy Statement –2020 / A Place to Grow, Growth Plan for the Greater Golden Horseshoe – 2020 Consolidated

The Provincial Policy Statement (PPS) remains in effect until October 19th, 2024, following which the new Provincial Planning Statement, 2024 comes into effect. The PPS provides guidance on all land use planning matters in Ontario. All planning decisions must conform to the policies of the PPS.

The subject lands are designated as a Prime Agricultural Area and Natural Heritage within

both the existing Provincial Policy Statement and the Provincial Planning Statement 2024. While both PPS documents do not specifically speak to severances by way of Navigable Waters, the PPS is generally not supportive of severances that have the effect of creating non-agricultural lots. Both the PPS 2020 and 2024 requires the protection of agricultural areas for long-term agriculture use.

The applicants were required to submit both a farm business plan and planning justification report to demonstrate how the rezoning will achieve the objectives of the PPS in order to ensure that agricultural uses remain the primary use of the subject property. The three major business activities of the proposed start up farm are as follows, the first is natural garlic crops, the applicants have stated that the farm will offer garlic in its natural form as well as in the future provide other garlic products. The second business is a horse boarding business, which in the future the farm will provide horse care and boarding on the property. The applicants are proposing a 6 stall horse barn for this proposed business. The third business proposed on the property is hay products. The hay will be grown on the farm, it will be bailed by a third party and will be offered for sale as a bale.

A portion of the property is also designated as natural heritage. The applicants have also submitted a scoped Environmental Impact Assessment which concludes that there will be no negative impacts from the proposed development on the Natural Heritage features.

Planning Staff will continue to review this application against the PPS 2024 and provide a full review as part of a future recommendation report.

Niagara Official Plan, 2022

The Niagara Official Plan (NOP) provides long-term strategic policy planning and framework for managing the anticipated growth for the Niagara Region. The subject lands are located within the Prime Agricultural Area and Section 4 of the NOP provides the objectives for the Agricultural System which is facilitating a strong, diverse, and resilient agricultural economy and protecting the Region's agricultural land base. While the NOP does not have any specific policy regarding natural severances, one of the main objectives of the plan is ensuring the long-term sustainability and function of uses within the system and protecting long term use of agriculture.

The applicants have stated in their business plan, which is included as Attachment 4 to this report, that it is their intent to maintain the existing cash crop farming operation on the subject lands, but also to include 10 acres of hay crops and 3-acre garlic crops, small scale egg production and a future 6 stall horse barn for horse boarding. A dwelling and accessory building are also proposed. In addition to agricultural uses, a portion of the accessory building is also proposed to be used for a contractor's business of the owner. The owners have stated this is an on-farm diversified use. Ross Robins has provided information on his business which states that Robins Electric provides wiring internally in the various industries and structures associated with each, the latest being the Huzinga Dairy operation in Wellandport, and a new horse farm in Dunnville on Crown Rd. 70% of the business deals with new builds, additions, or service works. The other 30% being

residential or municipal service work. The employees of the business of not work at the property however they park there occasionally.

Township of West Lincoln Official Plan (OP)

The subject lands are designated as Good General Agricultural lands and Natural Heritage System (Environmental Protection Area and Environmental Conservation Area) within the Township's Official Plan (OP). The purpose of the Township's Good General Agricultural designation is to ensure that these areas are protected and preserved for long term Agricultural purposes.

As previously noted, the applicants have stated that it is their intent to maintain the existing cash crop farming operation on the subject lands as well as to include 3-acre garlic crops, small scale egg production and a future 6 stall horse barn for horse boarding.

The Township's OP policy for Good General Agricultural Area Policies support smaller agricultural parcels provided that the resulting parcels are both for agricultural use and the size of the resulting agricultural parcels:

- i. Is appropriate for the agricultural activities proposed,
- ii. Is suited to the particular location and common in the area, and
- iii. Provides some flexibility for changes in the agricultural operation.

While the parcel north of the creek is significantly undersized for an agricultural parcel in reference to the minimum lot area of the Township's Zoning Bylaw, it has already been created through a natural severance.

The applicants have additionally provided a scoped EIS report which indicates that the proposed development and zoning bylaw amendment have no negative impacts on the environmental features on the property and therefore the Township's Natural Heritage Policies of the OP are maintained.

Township of West Lincoln Zoning By-law 2017-70, as amended (ZBL)

The subject parcel is currently zoned Agricultural 'A', Environmental Conservation 'EC', and Environmental Protection 'EP'.

This rezoning application is to recognize the subject parcel as a "lot" for the purposes of zoning following the natural severance that was approved in August 2024. The subject parcel does not meet the definition of a 'lot' in the Township's Zoning By-law 2017-70, as amended. In summary, a lot means one parcel or tract of land that is registered as a legally conveyable parcel of land in the Land Registry Office and which fronts on a public street, please refer to the complete definition of 'Lot' below from the Township's Zoning By-law 2017-70, as amended.

"LOT means one parcel or tract of land that is registered as a legally conveyable parcel of land in the Land Registry Office which is:

- *a whole lot as shown on a Registered Plan of Subdivision except those which have been deemed not to be a Registered Plan of Subdivision under a by-law enacted pursuant to the*

Planning Act; or

- *a separate parcel of land shown on a Registered Plan of Condominium that is individually owned and conveyed as a single unit with associated private outdoor areas excluding common elements and other shared facilities that have common ownership;*
- *a separate parcel of land without any adjoining lands being owned by the same owner as of March 5, 1979 (Bylaw 2018-89); or*
- *a separate parcel of land, the description of which is the same as in a deed which has been given consent pursuant to the Planning Act; or*
- *a separate parcel of land being the whole remnant remaining to an owner or owners after a conveyance made with consent pursuant to the Planning Act;*

and which:

- *fronts on a public street; or*
- *fronts on, and is legally tied to, a private street within a Registered Plan of Condominium which provides direct access to a public street or which connects to another private street(s) in Registered Plan(s) of Condominium having access to a public street; or*
- *for an existing lot, the existing lot has access to an existing private street which provides direct access to a public street or which connects to another existing private street(s) having access to a public street.*

For the purposes of this By-law, no parcel or tract of land ceases to be a lot by reason only of the fact that a part or parts of it had or have been conveyed to or acquired by any public agency.

*For greater certainty, a lot created through testamentary devise or by a navigable waterway is **not a lot for the purposes of this by-law** unless it meets the requirements of this definition and By-law 2017-70. (BY-LAW NO. 2022-67)” (please refer to pages 15 and 16 of the ZBL).*

As previously mentioned, a Court Order was issued on August 17th 2023 declaring that the bed of North Creek is navigable through the property (Court File No. CV-23- 000061500-0000) and ordered that the draft reference plan of Rasch & Hyde Ltd. dated August 31st 2023, be deposited as a reference plan in the Land Registry Office which was received and deposited on August 31st, 2023. Please see PLAN 30R-16154 found in Schedule F. The Court Decision did not go as far as to say that the parcel of land (Both Parts 1 and 2) are deemed as lots under the Township’s Zoning Bylaw.

In addition to recognizing Part 1 as a “lot”, this application will rezone the Agricultural ‘A’ lands on Part 1 of PLAN 30R-16154 to an Agricultural zone with a site specific provision recognizing the deficient lot area resulting from the related natural severance. The subject lands have a total lot area of 7.5 hectares (19.53 acres) whereas, Table 12 of the Township’s Zoning By-Law 2017-70, as amended, identifies 40 hectares (98.84 acres) as the minimum lot area permitted within an Agricultural ‘A’ zone. This

application also seeks to recognize a deficient lot frontage of 44.3 metres whereas the zoning bylaw required 100 metres.

Finally, this application also seeks to permit a contractor's establishment on the property as an on-farm diversified use on a property of 7.5 hectares, whereas the Zoning Bylaw requires a minimum of 10 hectares to permit an on-farm diversified use.

FINANCIAL IMPLICATIONS:

There are no financial implications associated with this report.

INTER-DEPARTMENTAL COMMENTS:

Notice of the Public Meeting was circulated to all relevant agencies and departments on September 11th, 2024 and the notice was also posted to the Township's website.

Regional Staff of the Growth Strategy and Economic Development Department and Environmental Planning offers no objection to the proposed amendment to recognize the subject parcel as a buildable lot subject to the satisfaction of the Township. In addition, staff recommends that a Holding Provision is placed on the subject parcel in order to implement the recommendations of the EIS. Further, the Township should be satisfied that a principal agricultural use is established prior to the approval of an On Farm Diversified Use as discussed above.

The Niagara Peninsula Conservation Authority (NPCA)

Provided in the Zoning By-Law Amendment Application, the applicant has provided a proposal for a 'Scoped Environmental Impact Statement' dated, November 29, 2023.

Provided in the Zoning By-Law Amendment Application, the applicant submitted a proposed Grading Plan dated, July 23, 2024 by Rasch and Hyde Ltd. The NPCA has reviewed and offers no objections to the proposed dwelling, storage, septic tank and dog kennel. The proposed driveway provides safe access for the proposed works, and flood hazards are not of a concern for the proposed placement. However, the applicant is advised that the proposed driveway does encroach on the NPCA Regulated Limited as such, an NPCA Permit (with applicable fees) will be required prior to the start of proposed development.

Public Works Department has reviewed the application and have no comments to provide as this application has no impacts to Township infrastructure.

At the time of writing this report, the Township's Building Department and Septic Inspection Manager have yet to provide comments on this application.

PUBLIC COMMENTS:

A Notice of the Public Hearing was mailed to all residents within 120 metres of the subject

property on September 11th, 2024. In addition, a yellow sign was posted on the property on September 12th, 2024. As of the preparation of this Report, Planning Staff have not received any public comments regarding this application.

CONCLUSION:

An application for rezoning to recognize a parcel of land as a “lot” for the purposes of zoning following a natural severance approved by the Ontario Superior Court of Justice has been submitted by the agent Ross Robins on behalf of Evelyn Duck, property owner of the subject lands, being 7395 Twenty Road.

The applicant is requesting to rezone the subject lands to permit a buildable lot which currently does not meet the definition of a ‘lot’ in the Township’s current Zoning By-law 2017-70, as amended. This application also proposes a site specific exception to recognize the deficient lot area of Part 1 being 7.5 hectares (18.53 acres) whereas, 40 hectares (98.84 acres) is identified as the minimum lot area permitted within an Agricultural ‘A’ zone by Table 12 in the Townships Zoning By-law 2017-70, as amended and to permit a deficient lot frontage of 44.3 meters whereas the zoning by-law required 100 meters.

Administration Staff will consider any comments received and will bring a recommendation report forward at a future Planning Building and Environment Committee Meeting.

SCHEDULES:

- Schedule A – Location Map
- Schedule B – Planning Justification Report
- Schedule C – Site Plan
- Schedule D – Site Servicing Plan
- Schedule E – Court Order
- Schedule F- Plan 30R16154
- Schedule G – Archaeological Assessment & Public Register of Archaeological Assessment Report
- Schedule H - Robins Creek Farm Business Plan
- Schedule I – Environmental impact Study
- Schedule J – Agency Comments

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