

Planning Justification Report

280, 282 & 298 Niven Road

Niagara-on-the-Lake, ON

September 2024 (revised November 2024)

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PREFACE

Upper Canada Consultants was retained by Mr. Albert Nickel (“the Applicant”) Inc. to prepare Planning Justification Report in relation to re-zoning the lands known municipally as 280, 282 and 298 Niven Road in Niagara-on-the-Lake.

The subject lands received approval to sever two (2) existing single detached dwellings (280 & 298 Niven Road) from the property as surplus farm dwellings. The decision was not appealed by the Town, and therefore the lots are determined to be residences surplus to a farming operation. The remnant parcel (282 Niven Road) is to continue to be used for agricultural purposes. A portion of an existing gravel driveway on the retained parcel (282 Niven) was established to provide continued legal access to Niven Road, while allowing an easement to the benefit of 280 and 298 Niven Road for continued driveway access.

The subject Zoning By-law Amendment application can be considered a technical request meant to implement the necessary Agricultural Purposes Only (APO) Zoning and site-specific lotting criteria for 282 and 298 Niven Road.

This report assesses how the applications satisfy the necessary requirements of the Planning Act, are consistent with the Provincial Planning Statement (2024) and conform to applicable Provincial, Regional and local land use planning policies, by-laws and design guidelines.

This report should also be read in conjunction with the following materials:

- Draft Zoning By-law Amendment prepared by Upper Canada Consultants (**Appendix I**)
- Zoning By-law Schedule (**Appendix II**)
- Severance Sketch prepared by J.D. Barnes Ltd.

LAND USE DESIGNATION AND ZONING

The subject lands are located outside of the Old Town Settlement Area Boundary, within the Provincially defined “Rural Area”. The property is located within the Greenbelt Plan Area and more specifically, the Niagara Tender Fruit and Grape Lands which are a part of the Protected Countryside.

In conformity with the Greenbelt Plan, the subject lands are designated as Speciality Crop Area in the Niagara Official Plan (2022).

Schedule “B” of the Town of Niagara-on-the-Lake Official Plan designates the subject lands as “Agricultural” and “Conservation Area”. The Conservation Area designation is generally reflective of an existing watercourse and floodplain.

As the property is located outside of a Settlement Area it is subject to Town Zoning By-law 500A-74. The Zoning By-law zones the subject lands as “Rural” (A).

APPROVAL HISTORY

The subject lands received approval for severance on June 21, 2024 to convey two parcels of land for the proposed surplus farm dwellings, known municipally as 280 and 298 Niven Road. The decision by the Committee of Adjustment determined that 280 and 298 Niven are residences surplus to a farming operation. There were no appeals to the decision approving the severances and determining Parts 1 and 2 to be residences surplus to an agricultural operation, therefore the decision to confer status stands pending several technical conditions. Consistent with that decision, the retained lands (282 Niven Road) are to be continued to be used for agricultural purposes. The lands also received approvals for a right-of-way to allow 280 and 298 Niven to retain access to their lots.

The Consent to Sever included four (4) geographic Parts. These Parts coincide with the Parts shown on the Key Plan and overall Severance Sketch provided as **Figure 2** and **3** to this report, as follows:

- Part 1 – 280 Niven Road (Surplus Dwelling)
- Part 2 – 298 Niven Road (Surplus Dwelling)
- Part 3 – 282 Niven Road (Existing Gravel Driveway, Part of Remnant Agricultural Property)
- Part 4 – 282 Niven Road (Remnant Agricultural Property – “Farmed Area”)

Parts 1 and 2 were approved as part of the consent application as independent lots from Part 3 and 4. To facilitate continued driveway access to the proposed surplus dwelling Lots (Parts 1 & 2) an access easement over Part 3 was approved.

The lots were divided along the boundary of the existing shared driveway access, with the watercourse and floodplain to the west serving as the rear lot line. The lot lines for the surplus dwelling were determined in consultation with the NPCA to ensure they are situated 5 meters outside the floodplain of the nearby watercourse on the retained lands. This creates an appropriate buffer between the watercourse and the existing development. The lots exceed the 0.4-hectare size threshold under applicable policy. However, the lands surrounding the dwellings are encumbered by existing development, septic systems, shared driveway accesses, a watercourse and associated floodplain. The intent of this policy was therefore met as the lands surrounding the dwellings cannot reasonable be farmed.

Appendix III to this report contains the severance sketch prepared by J.D. Barnes Ltd.

THE PROPOSED DEVELOPMENT AND APPLICATIONS

Zoning By-law Amendment

The purpose of the Zoning By-law Amendment is to allow the owner to clear conditions of consent. As a standard requirement of Surplus Farm Dwelling severances, the remnant agricultural property that is consolidated with other farm holdings is to be Zoned for “Agricultural Purposes Only” (APO Zone). The effect of this Zone prohibits the construction of a residential dwelling in perpetuity and permits agricultural uses only to occur on the property. Part 3 and Part 4 is therefore to be zoned “Agricultural Purposes Only (APO) Site-Specific Zone” to preclude a residential dwelling in perpetuity and permit the use of three farm help houses, and permits agricultural uses only to occur on the property.

Application is also made to rezone Parts 2 and 3 to “Rural (A) Site-Specific Zone” to recognize the proposed undersized lot frontages on Parts 2 and 3, and to recognize a deficient rear-yard setback to the new lot line for Part 2, which was established in consultation with the NPCA.

As a standard requirement of Surplus Farm Dwelling severances, the remnant agricultural property that is consolidated with other farm holdings is to be Zoned for “Agricultural Purposes Only” (APO Zone). The effect of this Zone prohibits the construction of a residential dwelling in perpetuity and permits agricultural uses only to occur on the property.

This required Zoning Application is typically considered after provisional approval of the Consent is granted by a Committee of Adjustment.

The dimensions of the lots are as follows:

<i>Address</i>	<i>Part</i>	<i>Area</i>	<i>Frontage</i>
<i>280 Niven Road</i>	<i>1</i>	<i>4,925.0 sq. m</i>	<i>68.45 m</i>
<i>298 Niven Road</i>	<i>2</i>	<i>6,010.8 sq. m.</i>	<i>15.11 m</i>
<i>282 Niven Road</i>	<i>3</i>	<i>17.7 ha</i>	<i>13.0 m (Niven)</i>
	<i>4</i>		<i>20.14 m (Wall)</i>

KEY PLAN (not to scale)
TOWN OF NIAGARA-ON-THE-LAKE

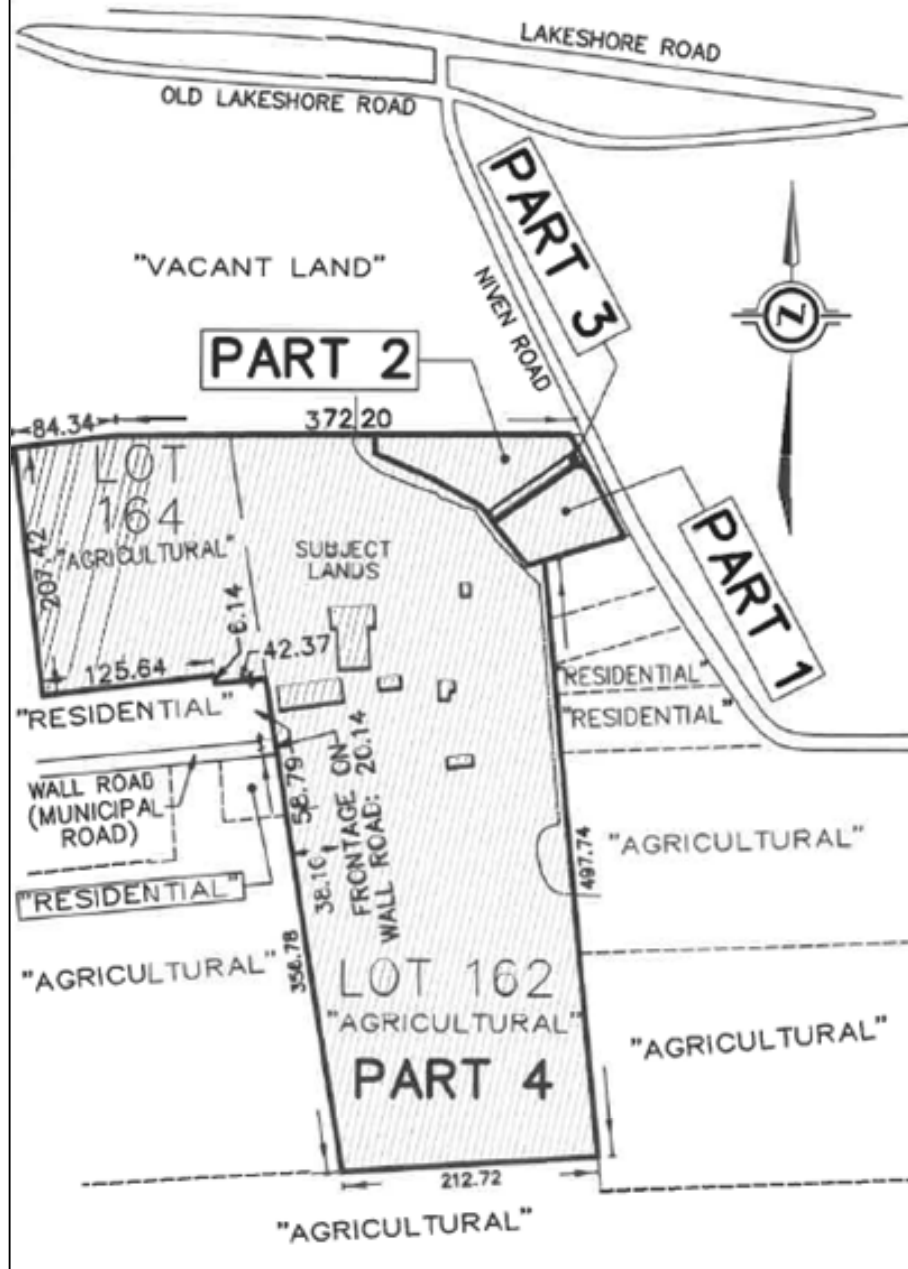


Figure 2 - Severance Sketch Key Plan

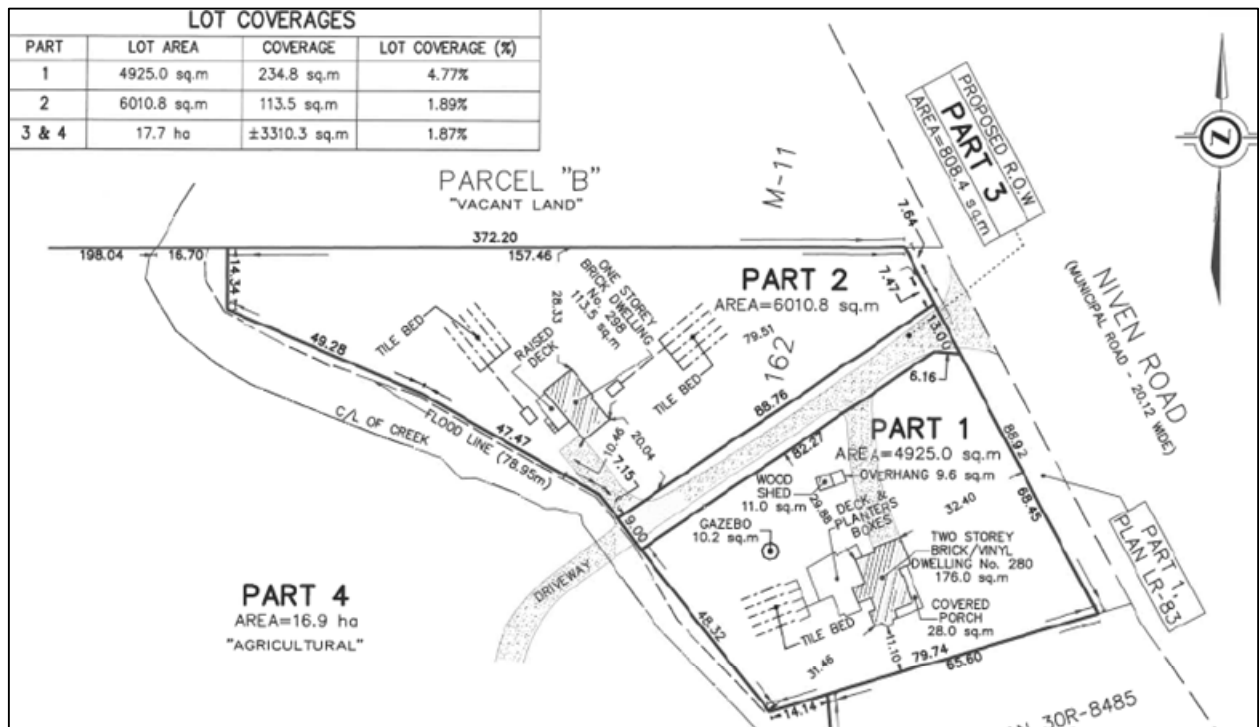


Figure 3 – Severance Sketch showing Surplus Lots and Right-of-Way Access

PROVINCIAL LEGISLATION AND PLANS

Development applications within the Town of Niagara-on-the-Lake are subject to the Ontario Planning Act (R.S.O. 1990), 2024 Provincial Planning Statement and 2017 Greenbelt Plan. An assessment of how the submitted applications conform to applicable Provincial legislation, plans and policies is provided below.

PLANNING ACT (R.S.O. 1990)

The Planning Act regulates land use planning in the Province of Ontario. The Act prescribes matters of Provincial Interest with regard to land use planning and the necessary procedures to be followed when making applications for development.

Section 2 – Matters of Provincial Interest

Section 2 of the Planning Act outlines matters of Provincial Interest that a Planning Authority must have regard for when contemplating a land use planning application. Matters of Provincial Interest include:

- a) the protection of ecological systems, including natural areas, features and functions;*
- b) the protection of the agricultural resources of the Province;*
- c) the conservation and management of natural resources and the mineral resource base;*
- d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;*
- e) the supply, efficient use and conservation of energy and water;*
- f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;*
- g) the minimization of waste;*
- h) the orderly development of safe and healthy communities;*
 - (h.1) the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies;*
- i) the adequate provision and distribution of educational, health, social, cultural and recreational facilities;*
- j) the adequate provision of a full range of housing, including affordable housing;*
- k) the adequate provision of employment opportunities;*
- l) the protection of the financial and economic well-being of the Province and its municipalities;*

- m) *the co-ordination of planning activities of public bodies;*
- n) *the resolution of planning conflicts involving public and private interests;*
- o) *the protection of public health and safety;*
- p) *the appropriate location of growth and development;*
- q) *the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians;*
- r) *the promotion of built form that,*
 - (i) *is well-designed,*
 - (ii) *encourages a sense of place, and*
 - (iii) *provides for public spaces that are of high quality, safe, accessible, attractive and vibrant;*
- s) *the mitigation of greenhouse gas emissions and adaptation to a changing climate. 1994, c. 23, s. 5; 1996, c. 4, s. 2; 2001, c. 32, s. 31 (1); 2006, c. 23, s. 3; 2011, c. 6, Sched. 2, s. 1; 2015, c. 26, s. 12; 2017, c. 10, Sched. 4, s. 11 (1); 2017, c. 23, Sched. 5, s. 80.*

This application has specific regard for items *a), b) and o)* of Section 2 of the Planning Act, as the subject application is meant to zone the subject lands as agricultural only in perpetuity as a condition of consent.

a) the protection of ecological systems, including natural areas, features and functions;

As requested by the NPCA, the owner commissioned the completion of a Topographic Survey to confirm the location of the floodplain associated with an on-site watercourse at the western end of the proposed surplus farm dwelling lots. Through analysis, the 100-year flood line was confirmed and mapped at an elevation of 78.95 metres ASL. The proposed lots were located outside of the floodplain elevation to ensure protection of the watercourse and that fragmentation does not occur. The proposed severances are therefore appropriately proposed where they will protect the adjacent ecological features.

Adjacent natural heritage features mapped in the Regional Official plan are also similarly protected, as no new physical development is contemplated through these applications.

The proposed re-zoning to correct the rear-yard deficiency is to accommodate and protect these adjacent features, and therefore the subject application meets this policy.

b) the protection of the agricultural resources of the Province;

The agricultural resources of the Province are protected through the re-zoning. The divestiture of the surplus dwellings will allow for the existing agricultural operation to continue, unencumbered by the need to maintain the residential lands uses on site. The severances do not contain any actively cultivated lands and therefore do not reduce the agricultural yield or tillable acreage of the farm. The application of an “Agricultural Purposes Only” zoning will therefore ensure the long-term viability of the existing farm in perpetuity.

o) the protection of public health and safety;

Risks to public health and safety on the subject lands include the floodplain adjacent to the proposed surplus lots. The dimensions and extent of these lots have been configured to stay out of the regulated floodplain which in turn will limit any negative impacts to public health and safety on the property.

Overall, the applications satisfy the applicable criteria of Section 2 of the Planning Act.

2024 PROVINCIAL PLANNING STATEMENT

Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns (PPS 1.1)

Sewage, Water and Stormwater (PPS 3.6)

Generally, the PPS directs that development is to occur on urban services wherever possible. It is acknowledged, however, that lands outside settlement areas typically have entirely private, or partial services. The approved surplus farm dwelling lots are supported by an existing partial servicing configuration. Water is currently provided through connections to an existing watermain on Niven Road and sanitary waste is managed by private septic systems on each lot.

The existing servicing configuration is known and supported by the Town, has not resulted in any known negative impacts and will not change through the consent applications. Accordingly, the retention of the existing servicing configuration for each proposed lot is considered to be consistent with the PPS. The re-zoning is only meant to recognize existing conditions, and not to intensify development, while also protecting existing farmlands in perpetuity.

Agriculture (PPS 4.3)

As outlined in Policy 4.3.1 of the PPS, “Prime agricultural areas shall be protected for long-term use for agriculture”, and that planning authorities support and foster the long-term economic prosperity of the agri-food network. The Agricultural Purposes Only (APO) Zoning amendment will ensure the long-term viability of the existing farm operation and protect agricultural resources. Notwithstanding that the Committee of Adjustment has determined Parts 1 and 2 residences surplus to an agricultural operation, disposing of the surplus dwellings minimizes stressors for the farm operation related to maintenance of the existing dwellings, and allows the operators to focus on core business practices including farming and sale of products produced. The surplus farm dwellings severances will therefore support the economic prosperity of the existing agricultural operation, consistent with the direction of the PPS.

Lot Creation and Lot Adjustments (PPS 4.3.3)

Consistent with Policy 4.3.3 c) 2) of the PPS, this application is made to zone the remnant farmland APO. The re-zoning will not reduce or impair the functionality of the agricultural operation, and the approval of this application will not result in any negative impact to the on-site agricultural activities, the loss of cultivated lands, or any impacts on the surrounding prime agricultural lands or existing residential land uses. The re-zoning will instead protect existing farmland in perpetuity.

The decision to declare the residences surplus to a farming operation was made when the Provincial Policy Statement (2020) was in effect. Under Section 3(5) of the Planning Act, a decision of a local board in respect of the exercise of any authority that affects a planning matter shall conform with provincial plans that are in effect on the date of the decision. As the Committee made their decision prior to October 20th, 2024, the date when the PPS (2024) came into effect, the decision to declare Parts 1 and 2 surplus residences was made under the PPS 2020, and it is the relevant document with respect to that decision.

The Town did not appeal the conferral the designation of residences surplus to an agricultural operation upon Parts 1 & 2. Had it found the decision unsupportable, there was an opportunity to address that at the time.

The application is to clear conditions of those severances. Those conditions relate to zoning deficiencies with respect to lot geometry, and to zone the remnant lot APO. The conditions of severance attached to that decision were not established to require the landowners to provide further justification for Committee's decision, posthumous to the decision, nor to provide rationale for the severances de novo. Additional retrospective justification is not warranted nor applicable to this application.

Notwithstanding these statements, the subject application fulfilled the criteria under the 2020 PPS. Policy 2.3.4.1 of the PPS (2020), states that lot creation in Prime Agricultural Areas is discouraged and may only be permitted for;

- c) a residence surplus to a farming operation as a result of farm consolidation, provided that:*
- 1) the new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services; and*
 - 2) the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance. The approach used to ensure that no new residential dwellings are permitted on the remnant parcel may*

be recommended by the Province, or based on municipal approaches which achieve the same objective; and

Consistent with the requirements of Policy 2.3.4.1 c), the surplus dwelling lots were determined by Committee of Adjustment to be residences surplus to a farming operation, and sized according to servicing requirements and to round out currently utilized yard areas, as there are definite physical boundaries to each proposed lot (natural heritage features, floodplain, adjacent lot lines and shared driveway access). In accordance with item c) 2), the agricultural remnant parcel (Parts 3 & 4) are to be re-zoned for Agricultural Purposes Only (APO).

The APO re-zoning will support the long-term viability of existing agricultural practices in the Prime Agricultural Area, and the applications are considered to be consistent with the 2020 PPS.

The Province's revision to the Provincial Planning Statement (2024) has altered the language around residences surplus to an agricultural operation, to specify that one (1) new residential lot may be permitted. However, as discussed above, the decision to sever was made under the PPS (2020), which had more ambiguous language around the specific number of new lots permitted, and it was under that PPS which the decision to declare the lands surplus was made. That decision is made, and the application is largely a technical matter as a result of that decision to bring Part 2 into conformity with zoning provisions, and to APO the remnant farmland parcel.

In summary, consistent with Policy 4.3.3 c) 2), this application will ensure that the remnant parcel of farmland created by the severance is zoned APO to ensure its long-term protection.

Natural Hazards (PPS 5.2)

As set out in Policy 5.2.3 of the PPS, natural hazards include:

- the dynamic beach hazard;
- defined portions of the flooding hazard along connecting channels;
- areas that would be rendered inaccessible to people and vehicles during periods of flooding; and
- a floodway.

The Four Mile Pond Estuary watercourse located west of Part 1 & 2 has an associated regulated floodplain. Through pre-consultation this hazard was identified by the NPCA who had requested that the proposed lot lines for the surplus dwelling lots be located a minimum of 5 metres outside of the floodplain. The applicant complied with this request and provided a topographic survey delineating the elevation of the floodplain and the adjusted lot line location. Given these edits

to the plan, the residential dwelling lots will not be affected by the floodplain, and human health and safety will be maintained. Accordingly, the applications are consistent with Section 3.1 of the PPS, as the site-specific zoning is required to accommodate the corner of the house to the rear-lot line and avoid the natural hazard.

2017 GREENBELT PLAN

The subject lands are identified as being within the Protected Countryside, and the subsequent Niagara Peninsula Tender Fruit and Grape Area on Schedules 1 & 2 of the Greenbelt Plan, as shown in **Figure 20**.

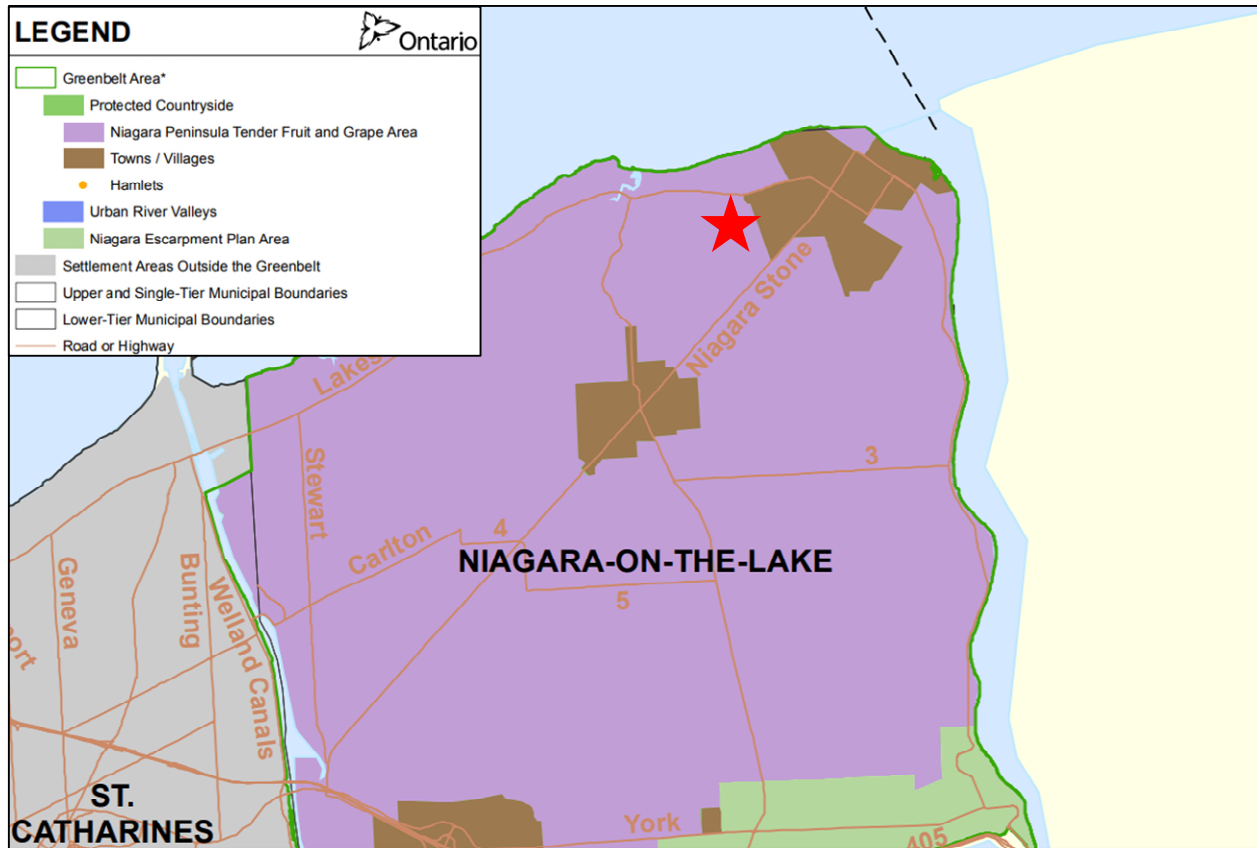


Figure 2 – Cropped Image of Schedule 2 of the Greenbelt Plan (2017)

Section 3 – Geographic-Specific Policies in the Protected Countryside.

Section 3.2 of the Greenbelt Plan provides Provincial policy direction on the natural environment system in the Plan Area. The overarching goals of these policies is to ensure that the Natural Heritage Systems and Water Resources Systems within the Protected Countryside are protected for the long term.

Policy 3.2.2 pertains to the Natural Heritage System. The policy permits existing and new agricultural uses, agriculture-related uses, on-farm diversified uses and normal farm practices within Natural Heritage System. Similarly, Policy 3.2.3 pertains to the Water Resources system and directs the protection of key hydrological features.

The subject lands contain, and are adjacent to both Natural Heritage System features and Key Hydrologic features, including Wetlands, Fish Habitat (Type 2), Significant Woodlands and permanent and intermittent streams.

While the Greenbelt Plan provides protective policy direction related to new development which may impact identified features, the submitted re-zoning does not propose or facilitate any physical changes to the subject lands. The existing use of the lands and location of structures will remain unchanged.

As there will be no alteration or change in the use of the lands, there will be no impact to on-site or adjacent features. As the features will remain unaffected by this re-zoning, the applications are considered to conform with the natural heritage policies Greenbelt Plan (2017). Accordingly, the re-zoning can be contemplated through Section 4.6 of the Greenbelt Plan.

Section 4 - General Policies for the Protected Countryside

Policy 4.6.1 of the Greenbelt Plan contains the general policies for Lot Creation in the Protected Countryside designation. These policies are included in the following Section. Item f) pertains to APO zoning following a consent for residence surplus to a farming operation.

1. Lot creation is discouraged and may only be permitted for:

- f) The severance of a residence surplus to a farming operation as a result of a farm consolidation, on which a habitable residence was an existing use, provided that:
 - i. The severance will be limited to the minimum size needed to accommodate the use and appropriate sewage and water services; and*
 - ii. The planning authority ensures that a residential dwelling is not permitted in perpetuity on the retained lot of farmland created by this severance. Approaches to ensuring no new residential dwellings on the retained lot of farmland may be recommended by the Province, or municipal approaches that achieve the same objective should be considered.**

The applications conform with the requirements with regard to Policy 4.6.1. f) i). As a condition of the proposed consent, the remnant parcel is required to be zoned for Agricultural Purposes Only (APO), consistent with the direction of Policy 4.6.1 f) ii). The required Zoning approval is acknowledged by the applicant. A copy of the Draft Zoning By-law is included as **Appendix II** to this report.

NIAGARA REGION OFFICIAL PLAN (2022)

The subject lands are located within the Specialty Crop Area Designation in Niagara-on-the-Lake, as shown on Schedule F (Agricultural Land Base) of the Regional Official Plan (ROP) provided below as **Figure 21**.

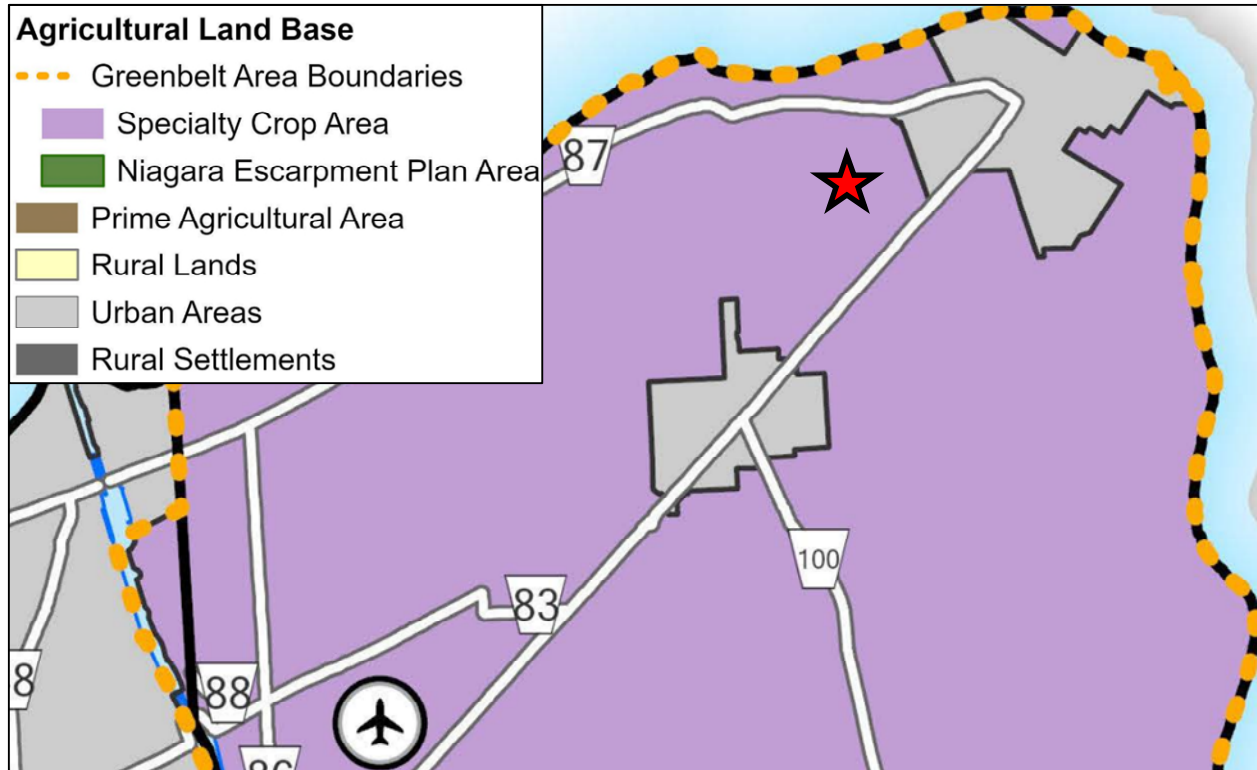


Figure 21 - Schedule B of Regional Official Plan (Cropped)

The Regional Official Plan (ROP) contains the Regional level growth policy direction for Niagara Region and the twelve (12) local municipalities inclusive of population and employment forecasts, intensification targets and specific locations and methods for development. These policy subsets are located amongst the Chapters of the Plan. Conformity with the relevant policies of the NOP are outlined below.

Chapter 4 – Competitive Region

Chapter 4 of the Regional Official Plan, titled “Competitive Region”, contains land use policies that pertain to Agricultural lands and development.

The applications propose to re-zone the subject lands following the provisional approval of surplus farm dwellings severances within the Specialty Crop Area designation. This type of application is subject to Policy 4.1.5 of the NOP, which states:

4.1.5 Lot Creation in Specialty Crop Areas

4.1.5.2

The severance of a residence surplus to a farming operation may be permitted under the following circumstances:

- d) to reduce fragmentation of the agricultural land base, the retained lot shall be merged with an abutting parcel. Where merging of two lots is not possible, the retained farm parcel shall be zoned to preclude its use for residential purposes.*

The applications conform with Policy c) as the remnant lands (Part 3 and 4) are to be zoned Agricultural Purposes Only (APO) as a condition of Consent Approval. The residential parcels require only minor zoning adjustment to accommodate the surplus severance. As such, the applications meets Regional policy.

TOWN OF NIAGARA-ON-THE-LAKE OFFICIAL PLAN (2017 CONSOLIDATION)

The Town of Niagara-on-the-Lake Official Plan is the long-range planning tool used to guide growth and development in the municipality. As shown on “Schedule B – Land Use Plan” of the Town Official Plan, the subject lands are designated as “Agricultural” and “Conservation” (see Figure 26).

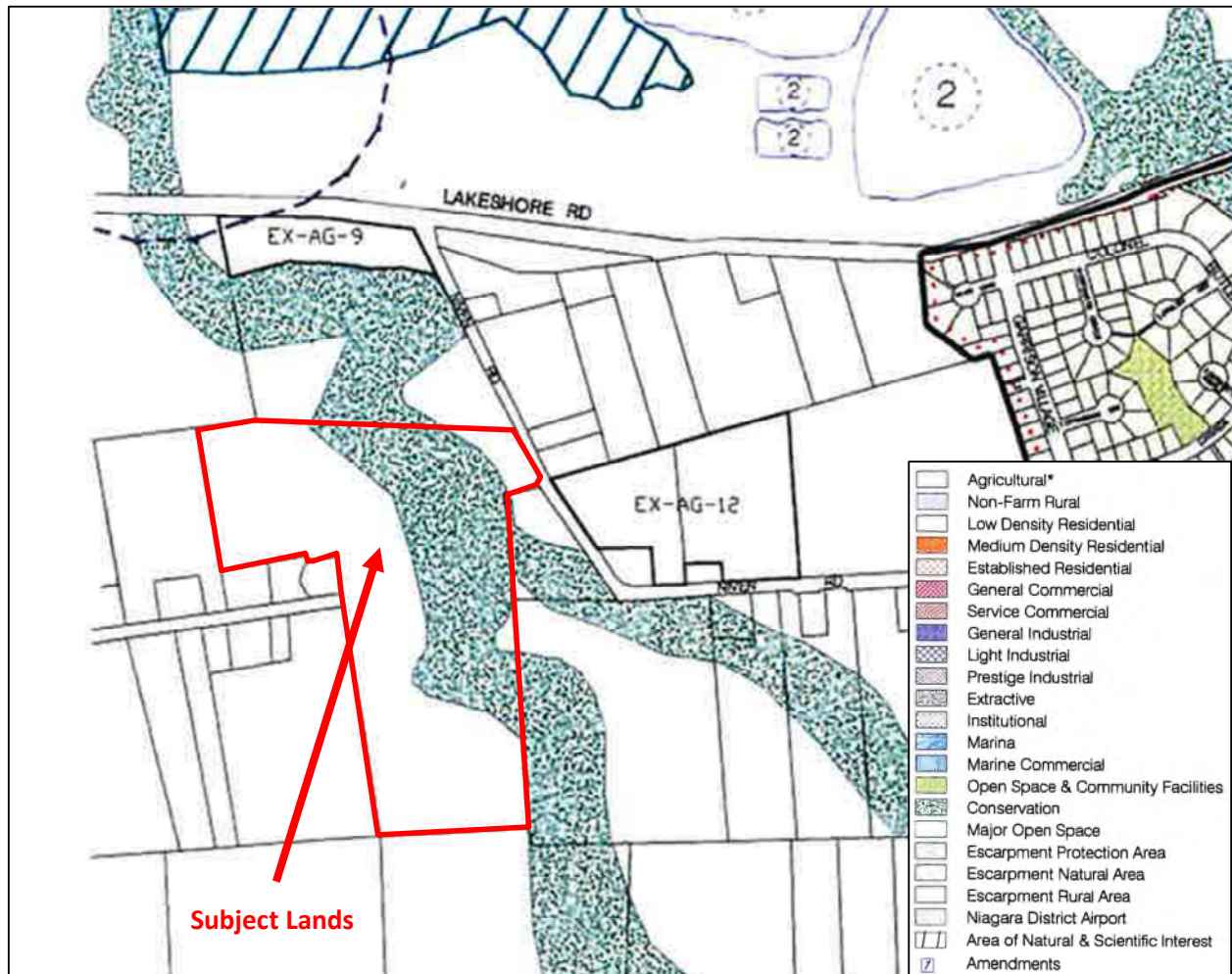


Figure 26 - Schedule A of Town of Niagara-on-the-Lake Official Plan (Cropped)

An overview of conformity with applicable Official Plan policies is provided in the following subsections.

SECTION 6: GENERAL DEVELOPMENT POLICIES

6.17 Lot Sizes

Policy 6.17 of the Official Plan prescribed that *“The lot area and lot frontage shall be suitable for the proposed uses and should conform to the provisions of the implementing Zoning By-law. In considering any plan of subdivision or consent application regard shall also be had to the minimum lot sizes provided in the zoning by-law so as to keep the lots as small as possible in relation to the efficient use of land and the need to preserve the agricultural land resource.”*

The proposed lot sizes for Part 1 and 2 are reflective of the lot area utilized by the existing dwellings. The lots have been divided along the boundary of the existing shared driveway access, with the watercourse and floodplain to the west serving as the rear lot line.

Part 1 (280 Niven Road) provides the minimum required lot area and frontage along Niven Road and does not require any site-specific zoning relief to facilitate the severance of the surplus dwelling lot. Part 2, however, provides adequate lot area but has deficient lot frontage along Niven Road. The lot frontage can be considered sufficient for a residential use and vehicular access to the lot.

The proposed frontage for 282 Niven Road will be legally located along Niven Road, as the proposed frontage of 13.0 metres will be less than the existing interface along the terminus of Wall Road which measures 20.14 metres. These two “frontages” are adequate for vehicular access to the site and the continued operation of the agricultural use. No additional frontage is required to support the use of the lands for farming. Part 3 and 4, being the retained agricultural property has frontage along Niven Road and Wall Road. In this case, a site-specific provision to permit 13.0 metres of frontage for 282 Niven Road is required.

6.23 Planning Impact Analysis

As a Zoning By-law Amendment is required to facilitate clearance of conditions for the approved surplus farm dwelling severances, a Planning Justification Report is required to be submitted with the application per Policy 6.23 of the Official Plan. The following policies of 6.23 can be considered relevant to this application:

- a) *Compatibility of the proposed use with surrounding land uses, and the likely impact of the proposed development on present and future land uses in the area and on the character and stability of the surrounding neighborhood. Where developments require an amendment to this Plan and are considered significant in terms of land area or impact the effect on the community and municipality must be addressed;*

- b) The height, location, and spacing of any buildings in the proposed development, and any potential impacts on surrounding land uses;*
- c) The extent to which the proposed development provides for the retention of existing vegetation or natural features that contribute to the ecological integrity and visual character of the surrounding area;*

The subject application recognizes through zoning an already existing land use compatibility and will have no negative anticipated impact. There is no proposed development as a result of the re-zoning, and it is only meant to recognize existing conditions. The house at 280 Niven Road (Part 1) was constructed in the year 2000. The dwelling is connected to the municipal watermain on Niven Road and has its private septic system located on the west side of the dwelling. The house at 298 Niven Road (Part 2) was constructed in the 1970s. The dwelling is connected to the municipal watermain on Niven Road and has its private septic system tile beds located on the east and north sides of the dwelling. The subject application meets the above policies.

- d) Where a medium density residential development is proposed: the proximity to public open space and recreational facilities, community facilities and transit services, and the adequacy of these facilities and services;*

There is no medium density development being proposed.

- e) The physical suitability of the land for such proposed use and any anticipated environmental effects. In the case of land exhibiting a potential hazard, consideration shall be given to;*
 - i. the existing environmental and/or physical hazards*
 - ii. the potential impacts of these hazards*
 - iii. the proposed methods by which these impacts may be overcome in a manner consistent with accepted engineering techniques and resource management practices*
 - iv. the costs and benefits in monetary, social and environmental terms of any engineering works needed to overcome the hazard.*

In accordance with the above policies, the re-zoning recognizes existing site conditions and therefore the land is suitable for the proposed use. The approved lot lines were created to adjust the lots to buffer from any impacts from existing environmental hazards and the impacts of those hazards.

- f) The size and shape of the parcel of land on which the proposed development is to be located, and the ability of the site to accommodate the intensity of the proposed use.*

The size and shape of the parcels are adequate for the proposed uses. The residential lots are appropriately sized to accommodate both the dwelling and septic as well as septic system replacement, should that be required. The agricultural lot and access from Niven is similarly appropriated sized to accommodate the continued function and access of the agricultural use.

- g) The potential effect of the proposed use on the financial position of the municipality where a development is of a size that would have an impact in this regard.*
- h) The adequacy of the existing roadway system to accommodate the proposed use and the location of vehicular access points and the likely impact of traffic generated by the proposal on streets, pedestrian and vehicular safety, and on surrounding properties.*

In accordance with the above policies, the severances create three taxable lots where there was only one, and therefore should not have a negative impact on the Town's financial position. Similarly, the existing road system is adequate because it has already absorbed the existing use since the last date of construction of 280 Niven in the year 2000. There is therefore no further intensification expected that would have an impact with respect to traffic generated on the proposed streets. The proposed zoning merely recognizes existing conditions and will not permit intensification or change of use from what exists.

- i) The regulations of the Regional Niagara Policy Plan, Niagara Peninsula Conservation Authority, the Niagara Escarpment Commission, Niagara Parks Commission, Provincial Policy and the requirements or regulations of any other applicable government department or agency.*

The NPCA and Region were consulted throughout the approvals process for the severances. The lot lines were created in consultation with the NPCA, and in accordance with Regional policy, the remnant lot is to be zoned APO.

- j) The servicing capabilities of the area and capacity of municipal services to accommodate the proposed use which shall include the drainage of the property and address the need for a storm water management plan*

The residential lots are connected to municipal watermain. The sites are privately serviced for sanitary and as discussed have sufficient room for septic should the existing septic systems need replacement.

- k) The location and adequacy of lighting, screening, and parking areas*
- l) Provisions for landscaping and fencing*
- m) The location of outside storage, garbage and loading facilities*

In response to the above policies, these would only be a requirement of a commercial use. As these are residential and agricultural lots, the above is not a requirement of the application.

n) The need and desirability of the use

As discussed above and as consistent with PPS section 1.7, the disposal of the surplus dwellings minimizes stressors for the farm operation related to maintenance of the existing dwellings and allows them to focus on core business practices including farming and sale of products produced. The surplus farm dwellings severances will therefore support the economic prosperity of the existing agricultural operation, consistent with the direction of the PPS.

o) The effect on the agricultural land base

In accordance with the above policy, the proposed application will ensure the continued agricultural viability of the retained lands, and ensuring its future viability.

This Planning Justification Report addresses all relevant matters outlined in Section 6.23 of the Official Plan.

6.25 Private Water Supply and Private Sewage Disposal

The surplus dwelling lots (Part 1 and 2) and existing farm property (Parts 3 & 4) are currently provided with municipal water, but rely on septic systems for sanitary waste.

Policy 6.25 of the Official Plan contains the following compliance criteria for development proposed on private servicing:

- a) The lot area shall comply with requirements of the authority having jurisdiction for the type of development proposed and the type of private system to be used.*
- b) The size of lots which are to be serviced in an unserviced area with private on site on-site sewage disposal shall not exceed an area of 0.4 hectares or 1 acre of useable land except if additional area is necessary because of private servicing concerns as determined by the authority having jurisdiction.*
- c) Lots serviced via on-site sewage disposal units should have a minimum frontage of 150 feet.*
- d) Frontage of 100 feet may be considered for lots containing a minimum 1.25 acres of suitable land area.*
- e) Each private sewage disposal system shall require approval by the authority having jurisdiction. Generally, the provision of private systems shall be restricted to residential development. If, in the opinion of the authority having jurisdiction any area appears*

questionable for the proper operation of a private sewage disposal system, an evaluation of the subject lands by a competent authority, shall be required before development is allowed to proceed.

- f) *The improvement of existing substandard private systems shall be encouraged by all means available to the municipality.*

The proposed lot areas for the surplus farm dwellings were sized in accordance with the minimum lot area requirements of the Rural (A) Zone of By-law 500A-74, of 0.3716 hectares. Both lots meet the minimum lot area and have been provided with additional area to reflect portions of the property that are not suitable for farming and that are being used for existing residential purposes.

The required minimum lot frontage for lots on septic systems is 150 feet per the official plan. Reduced lot frontages may be considered for lots with larger areas.

The existing septic systems are subject to inspection by the Regional Municipality of Niagara who provides septic inspection and permitting services for the Town of Niagara-on-the-Lake. To date, there have been no concerns cited with the type or condition of the existing septic systems serving the existing dwellings.

In the event that the existing septic systems need replacement, there is sufficient room on each proposed parcel for a new septic system.

6.29 Road Setbacks

Policy 6.29 requires that *“setbacks from roads shall be provided as required by the implementing Zoning By-law. Such setbacks shall be sufficient to allow space for landscaping and off-street parking, loading and movement of vehicles clear of any road allowances.”*

The proposed front yard setbacks for each surplus dwelling from Niven Road exceed the minimum setback of 15.24 metres. No relief from the zoning is required. Accordingly, the application meets Policy 6.29 of the Town’s Official Plan.

SECTION 7 AGRICULTURE

Section 7 of the Town of Niagara-on-the-Lake official Plan pertains specifically to Agriculture, which represents the dominant land use within the municipal boundary.

The Goals and Objectives for Agriculture are outlined in Section 7.2 of the Official Plan. Items 1, 3 and 7 are relevant to the submitted application and read as follows:

7.2 (1) *To help ensure the preservation of prime agricultural lands for farming with particular emphasis on the preservation of specialty crop lands.*

7.2 (3) *To allow flexibility to farm operations in both type and size and to permit the expansion and contraction of farm operations as necessary provided that the farm remains economically viable and that the size of the farm is appropriate and common in the area.*

7.2 (7) *To consider the impact on agriculture as the primary guideline in evaluating development proposals in the agricultural areas.*

The subject lands are located within the Specialty Crop Area and contain an existing agricultural use that occupies the majority of the site. The severance of the surplus dwellings is of operational and financial benefit to the farmer as they will no longer need to care for these dwellings and can place their focus on the agricultural operation. The severances are technical in nature and will not affect any farmed lands or take otherwise good agricultural lands out of production. Accordingly, the applications implement the noted goals and objectives of the Official Plan.

Section 7.3 of the Official Plan outlined the permitted main and secondary uses in the Agricultural Area. The Plan permits all forms of agriculture and related buildings, farm residences, livestock, market gardening, greenhouses and nurseries and forestry and reforestation uses. Secondary uses such roadside sales outlets, help houses and accessory buildings are permitted as well. In addition to these uses, agricultural markers, wineries and small scale industrial and commercial uses related to agriculture are permitted.

7.4.4 e) Consents

Policy 7.4.4 e) outlines the policy requirements for consents proposed in the Agricultural Area, and is outlined below:

e) Consents may be granted for a residence surplus to a farming operation as a result of a “farm consolidation” (refer to Greenbelt Plan for definition) where the dwelling existed prior to December 16, 2004 provided that:

- (i) The zoning prohibits in perpetuity any new residential use on the retained parcel of farmland created by the severance, and that the zoning ensures the parcel will continue to be used for agricultural purposes;*

With regard to the above noted policy, the application is made to satisfy conditions of consent and provide a Zoning By-law Amendment application to zone the remnant lands (Parts 3 & 4) for Agricultural Uses Only (APO). This will ensure the long-term use of the property for Agriculture. Based on the above analysis, the applications are deemed to conform with Policy 7.4.4. (e) of the Niagara-on-the-Lake Official Plan.

SECTION 21: GENERAL CONSENT POLICY

Section 21.2 of the Town's Official Plan contain twelve (12) Policies that must be considered during the preparation and review of applications. Given the scope of these surplus farm dwelling severance applications, only Policies 6 & 9 apply. An overview of conformity with each is provided.

(6) The size of any parcel of land created by a consent should be appropriate for the proposed use and without limiting the generality of the foregoing:

a) The lot area and frontage should not be less than the requirements for the relevant classification in the implementing by-law.

b) Where existing buildings are involved, the proposed new lot lines shall take into account required yard and setbacks set out in the Zoning By-law.

c) Where land is in an urban area, any land which is fully serviced shall respect the valuable resource of serviced land and the lots created should not greatly exceed the minimum standards of the zoning by-law.

Under Policy (6) items a) and b) apply to surplus farm dwelling severances.

With regard to item a), the proposed lot sizes exceed the minimum requirement of the Rural (A) Zone which is 3,716 square metres.

With regard to item b), there is only one item of non-conformity associated with yards and setbacks. This deficiency is located between the proposed rear lot line of Part 2 (298 Niven Road) and the existing dwelling. The minimum required rear yard setback is 15.24 metres, whereas the existing setback is 10.64 metres from the proposed lot line. This deficiency is a result of the required location of the rear lot line outside of the floodplain feature. The lot is otherwise sufficient with respect to rear-yard amenity space and functional use of the lot for residential purposes.

(9) Proposed new lots lines shall take into account the existing pattern of surrounding lands. Wherever possible, the new lines shall avoid creating irregular boundaries for the parcel in question or that remaining. Where lands in the Agricultural designation are affected, every attempt shall be made to avoid creating a lot pattern which would make it difficult to farm

The proposed lot lines were reflective of existing farming limits, natural heritage and hazard features and an existing shared driveway. Although the boundaries could be viewed as irregular due to their geometry, the limits are based on clear physical boundaries on the property which

can be visually discerned. The proposed boundaries of the surplus dwelling lots will have no impact on the agricultural viability of the remnant lands.

TOWN OF NIAGARA-ON-THE-LAKE ZONING BY-LAW 500A-74

Schedule "A" of the Town of Niagara-on-the-Lake Zoning By-law 500A-74 delineates the subject lands as being zoned as Rural (A) (see **Figure 28**, below).

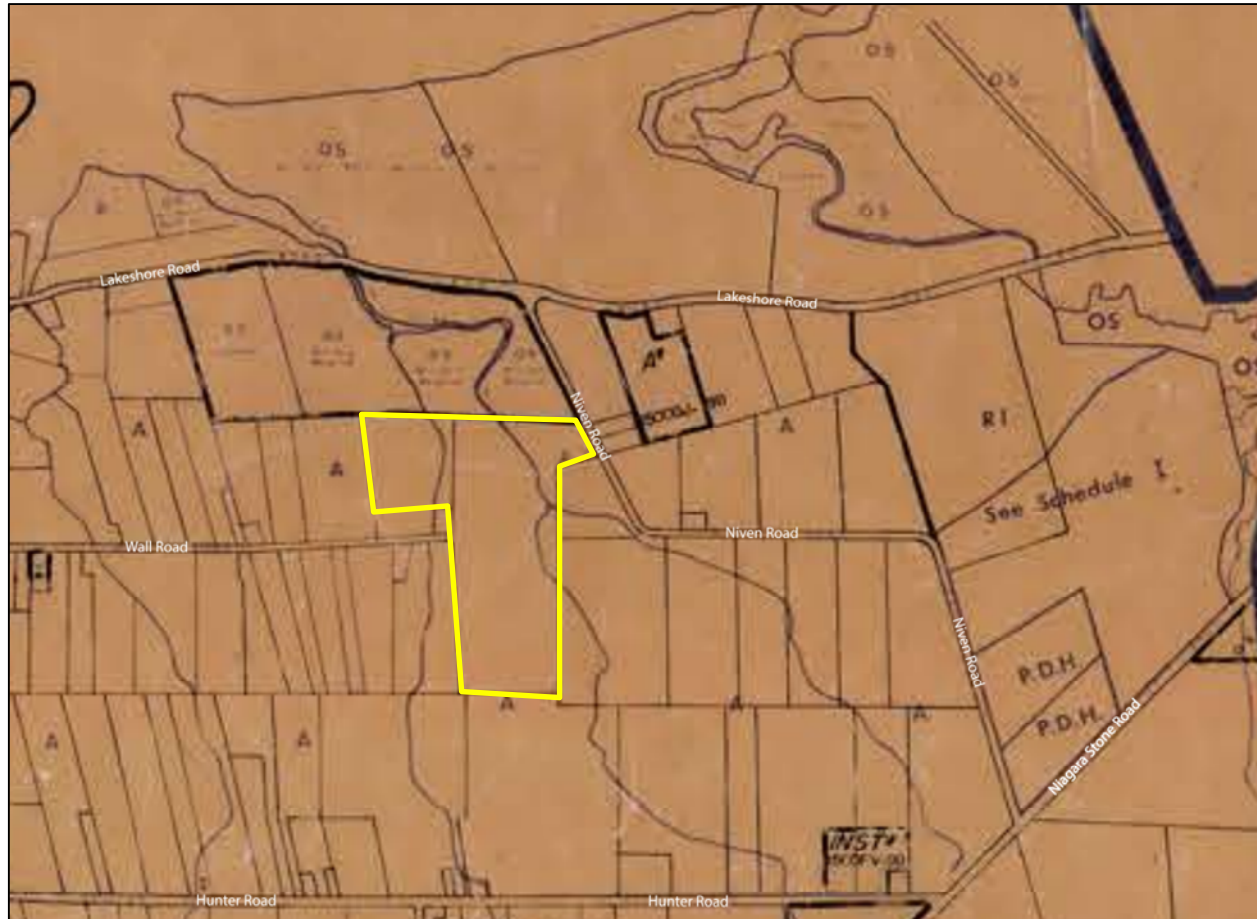


Figure 28 - Schedule A-3 of Zoning By-law 4316-09

To implement the proposed severances of surplus farm dwellings, a Zoning By-law Amendment is required. The scope of this amendment includes the following:

1. Rezoning of the remnant Parcel 282 Niven Road (Parts 3 & 4) for "Agricultural Purposes Only" (APO), with site specific provisions for reduced lot frontage along Niven Road; *and*
2. Rezoning of 298 Niven Road (Part 2) to site-specific Rural (A-X) for reduced lot frontage along Niven Road and reduced rear yard setback (existing).

An overview of the rezoning application and conformity with By-law 500A-74 is provided in the following section.

282 Niven Road

Reduced Lot Frontage

The remnant Agricultural Parcel known as 282 Niven Road, being Parts 3 & 4 on the Severance Sketch will have a frontage of 13.0 metres along Niven Road as a result of the proposed severances. This width is reflective of an existing driveway access used by the Farm that is intended to remain. An easement is proposed to be provided for the continued use of the shared driveway for access to the proposed surplus dwelling lots from Part 3.

The location of the proposed frontage is shown on **Figure 29**. This 13.0 metre access has existed and functioned without issue for several years and is considered adequate to support the existing agricultural operation and surplus farm dwelling lots.

298 Niven Road

Reduced Lot Frontage

The minimum required lot frontage for Rural (A) lots containing a residential dwelling is 60.96 metres. Based on the proposed lot configuration and the desire of the owner to keep the existing shared driveway access, the resultant frontage for 298 Niven Road would be 15.11 metres or 45.85 metres deficient. The proposed frontage is shown in **Figure 29**.

The requested provision for substandard frontage will have no impact on the ability for the property to be accessed, the dwelling to continue to be utilized and be maintained or result in any other zoning conformity matters. The property currently relies on the shared driveway for access to dwelling, which will continue to be at the western end of the lot. This requested provision simply reflects an existing condition and will have no negative impact on the adjacent lands or current agricultural practices.

Reduced Rear Yard Setback

As a result of the proposed severance boundary for Part 2, a deficient rear yard setback from the rear lot line to the western wall of the existing dwelling is created. The existing building is located 10.46 metres from the proposed rear lot line, whereas a minimum setback of 15.24 metres is required. The proposed setback is shown in **Figure 29**.

This reduction is considered appropriate as the rear yard setback provision is to be implemented to create spacing between development and adjacent properties and land uses. In this circumstance, the dwelling has existing in harmony with the adjacent agricultural operation for over 50 years, and is physically separated from the farm lands by trees and a watercourse. The requested reduction in setback will have no impact on the remnant farm parcel or affect the usability of Part 2 for continued residential purposes.

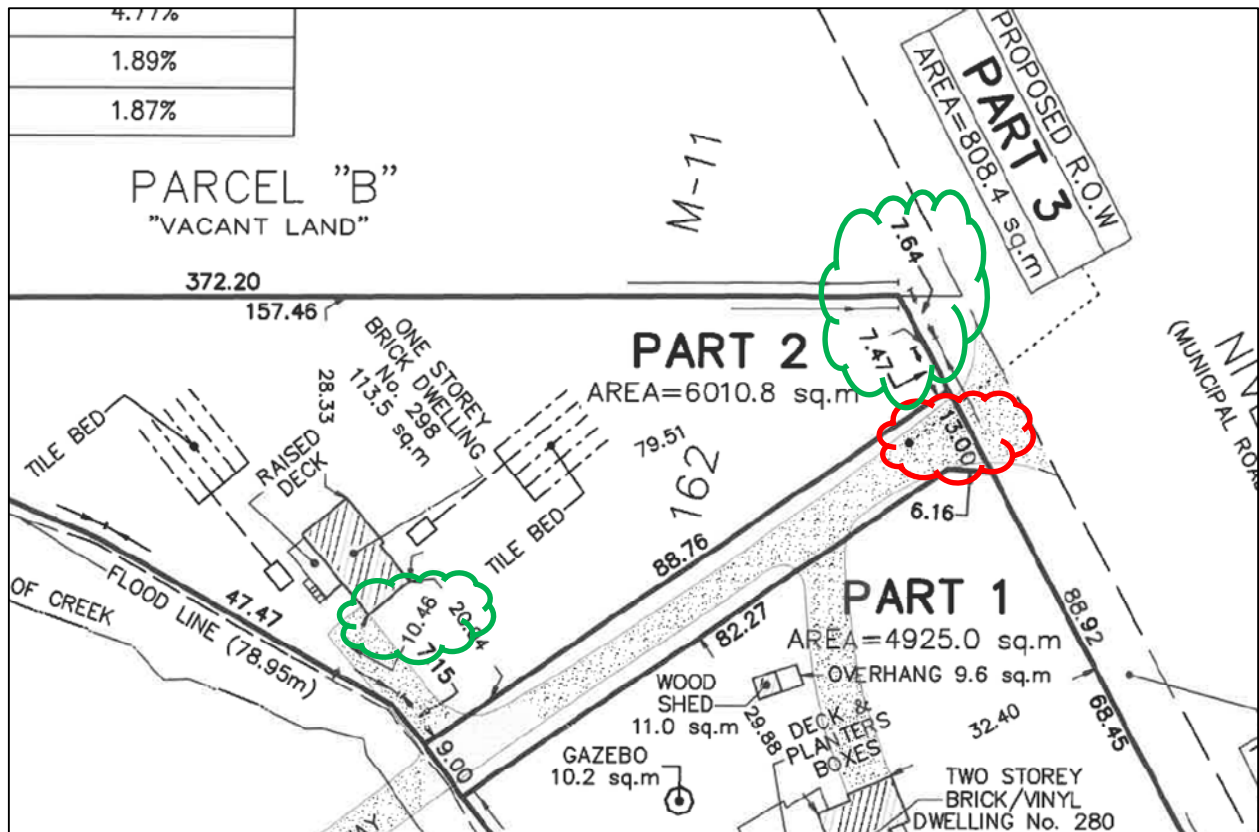


Figure 39 – Location of Site-Specific Provisions – 282 Niven Road Provision Shown in Red Cloud, 298 Niven Road Provisions Shown in Green Cloud.

Zoning Conformity Matrices reflecting the site-specific departures from the applicable Zoning have also been provided as **Table 1** and **2** on the following pages of this report.

TABLE 1: ZONING CONFORMITY – SURPLUS FARM DWELLING LOTS (PARTS 1 & 2) – 4 A b) ZONING

To facilitate the Surplus Farm Dwelling Severances, the proposed lots must comply with the provisions of the 4 A b) Zoning provisions. Departures from the By-law are shown in Bolded Red Text with Highlight – **Example**.

Rural (A) Zone Provision Set 4 A b)	Required	Proposed	
		280 Niven Road	298 Niven Road
Permitted Uses	<p>(a) Rural Uses (as amended by 500PE-01)</p> <ul style="list-style-type: none"> • a farm including accessory buildings, providing that in the event that the structures or the land is to be used for the purpose of a Specialized Farm Use as defined in Section 2.32 of this by-law, that a certificate of Compliance shall have been obtained from the Ministry of the Environment and the Ministry of Agriculture and Food. • a nursery or commercial greenhouse • any use or enterprise customarily carried on in the field of general agriculture, subject to the foregoing (By-law 500PE-01) • a home industry as defined in Section 2.40 of this By-law • a farm produce storage building • a seasonal home grown produce sales outlet • an animal hospital or kennel • a farm winery as in Sections 2.32-1 and 3.34 • a greenhouse building used for a Marihuana for Medical Purposes Facility (added as per 500WO-14) 	One Family Dwelling	One Family Dwelling

Rural (A) Zone Provision Set 4 A b)	Required	Proposed	
		280 Niven Road	298 Niven Road
	(b) Residential Uses <ul style="list-style-type: none"> a one (1) family dwelling a small scale tourist accommodation as defined in Section 2.73A (By-law 500LJ-97) a group home as in Section 2.36B and 3.35 (By-law 500MT-99) 		
Zone Requirements	Required	Proposed	
		280 Niven Road	298 Niven Road
Minimum Lot Frontage	60.96 m	68.45	15.11 m
Minimum Lot Area	3,716 m ²	4,925.0 m ²	6,010.8 m ²
Minimum Lot Depth	60.96 m	82.27 m	372.20 m
Maximum Lot Coverage	15%	4.77%	1.89%
Minimum Front Yard Setback	15.24 m	32.40 m (Niven Road)	79.51 m (Niven Road)
Minimum Interior Side Yard Setback	3.05 m	11.10 m	20.04 m
Minimum Exterior Side Yard Setback	9.14 m	N/A	N/A
Minimum Rear Yard Setback	15.24 m	31.46 m	10.46 m
Minimum Dwelling Floor Area	92.90 m ² (One Storey) 139.35 m ² (Two Storey)	113.5 sq. m. (One Storey)	234.8 sq. m. (Two Storey)
Maximum Building Height	10.67 metres	< 10.67 m	< 10.67 m
Minimum Accessory Building Setback	3.05 m	> 3.05 m	N/A

TABLE 2: ZONING CONFORMITY – REMNANT AGRICULTURAL LOT (PARTS 3 & 4) – 4 A a) ZONING

As a requirement of surplus farm dwellings severance, the remnant agricultural parcel (Parts 3 & 4) must be zoned for Agricultural Purpose Only (APO). An overview of compliance with the overarching Agricultural (A) Zoning provisions is provided below, with departures from the By-law shown in Bolded Red Text with Highlight – **Example**.

Rural (A) Zone Provision Set 4 A a)	Required	Proposed 282 Niven Road
Permitted Uses	<p>(a) Rural Uses (as amended by 500PE-01)</p> <ul style="list-style-type: none"> • a farm including accessory buildings, providing that in the event that the structures or the land is to be used for the purpose of a Specialized Farm Use as defined in Section 2.32 of this by-law, that a certificate of Compliance shall have been obtained from the Ministry of the Environment and the Ministry of Agriculture and Food. • a nursery or commercial greenhouse • any use or enterprise customarily carried on in the field of general agriculture, subject to the foregoing (By-law 500PE-01) • a home industry as defined in Section 2.40 of this By-law • a farm produce storage building • a seasonal home grown produce sales outlet • an animal hospital or kennel • a farm winery as in Sections 2.32-1 and 3.34 • a greenhouse building used for a Marihuana for Medical Purposes Facility (added as per 500WO-14) 	<p>a) a farm including accessory buildings, providing that in the event that the structures or the land is to be used for the purpose of a Specialized Farm Use as defined in Section 2.32 of this by-law, that a certificate of Compliance shall have been obtained from the Ministry of the Environment and the Ministry of Agriculture and Food.</p>

Rural (A) Zone Provision Set 4 A a)	Required	Proposed 282 Niven Road
	(b) Residential Uses <ul style="list-style-type: none"> • a one (1) family dwelling • a small scale tourist accommodation as defined in Section 2.73A (By-law 500LJ-97) • a group home as in Section 2.36B and 3.35 (By-law 500MT-99) 	
Zone Requirements	Required	Proposed 282 Niven Road
Minimum Lot Frontage	38.10 m	13.0 metres (Niven Road)
Minimum Lot Area	4.05 ha	17.7 ha
Minimum Lot Depth	-	N/A
Maximum Lot Coverage	15%	1.87 %
Minimum Front Yard Setback	15.24 m	> 200 metres
Minimum Interior Side Yard Setback	3.05 m	> 3.05 m
Minimum Exterior Side Yard Setback	9.14 m	N/A
Minimum Rear Yard Setback	15.24 m	N/A
Minimum Dwelling Floor Area	92.90 sq. m. 139.35 sq. m.	N/A
Maximum Building Height	10.67 m	< 10.67 m
Minimum Accessory Building Setback	-	-

PLANNING OPINION

The applicant has received provisional approval for Consent to Sever for lands within Niagara-on-the-Lake known municipally as 280, 282 and 298 Niven Road.

The applications severed two existing dwellings from an active agricultural operation, and the Committee of Adjustment's decision rendered these dwellings surplus farm dwellings. In addition to the surplus severances, an easement for access was also established over an existing shared driveway access from Niven Road.

To clear conditions on the surplus dwelling severances, a Zoning By-law Amendment is required to zone the remnant agricultural lands for Agricultural Purposes Only (APO), and to set out site specific criteria for lot dimensions and existing setbacks to recognize existing as-built conditions.

As demonstrated within this Report, the applications satisfy the necessary criteria of the Planning Act, are consistent with the 2024 Provincial Planning Statement and conform with the policies of the 2017 Greenbelt Plan, 2022 Regional Official Plan and Town of Niagara-on-the-Lake Official Plan, as amended.

It is my professional opinion that the application is appropriate, adhere to required policy and ultimately benefit the existing agricultural operation. Therefore, it is my opinion that the Town should support and approve these applications.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Nicholas Godfrey', written in a cursive style.

Nicholas Godfrey MA, MCIP, RPP
Senior Planner
Upper Canada Consultants