



REPORT PD-2014-011

TO: Mayor and Members of Council

FROM: Robert Kelly, Chief Building Official

DATE: November 5, 2014

SUBJECT: Conditional Building Permit Agreement
 Jeffrey Gordon Born and Vicki Marguerite Dickson
 4614 Concession 11
 File No. L04/BOR

RECOMMENDATIONS

That Report PD-2014-011 regarding the Conditional Building Permit Agreement be received; and

That Council enact a By-law to authorize the entering into of a conditional building permit agreement with Jeffrey Gordon Born and Vicki Marguerite Dickson.

DISCUSSION

Purpose

The subject property 4614 Concession 11 is an agricultural property that is an active farm. The owners of the property wish to redevelop their residence by building an addition to their dwelling, then demolishing the current dwelling and replacing it with an attached garage. The property has a livestock operation and the owners must remain on site during the construction of their new dwelling. The site is located on the west side of Concession Rd 11, North of Maltby Rd. It has a lot area of approximately 22.5 Hectares.

The applicant is requesting Council to enter into a Conditional Building Permit agreement to allow construction to proceed without unreasonable delays through an alternative process that affords the same protection and security requirements as intended through Resolution 8 passed by Council on March 7, 2012 as noted below.

Background

The applicant sought to obtain a building permit for an addition to their single family dwelling. During the review of the building permit application, it was determined that

although the application was for an addition, the subject construction would constitute a second dwelling; thus creating a zoning conflict during construction.

Resolution No. 8 passed by Council on March 7, 2012 established a policy that states:

“The Council of the Township of Puslinch does hereby establish a policy for the following requests:

- existing house to remain standing until new house is constructed
- temporary trailer placed on site until new house is constructed
- to allow an existing accessory building to be left on a parcel without a dwelling.

to include the following:

- That Minor Variance approval is required.
- That a security deposit in the amount of \$20,000.00 be submitted to and held by the Township of Puslinch.
- That the existing dwelling on the property be demolished within 18 months after the issuance of a building permit for the new dwelling unit, or 90 days after the issuance of an occupancy permit, whichever is less.
- That only one house shall be occupied at a time on the property.
- That the temporary trailer is to be removed no later than 60 days following the issuance of an occupancy permit.
- That the accessory building is removed or a permit for a single family dwelling is received within 6 months of the Minor Variance approval.

This policy becomes effective immediately.”

The above process would cause an approximate three month delay before building permits could be issued and the foundation would not be able to be put in the ground until sometime in February 2015.

Staff considered other options available to the applicant that adhere to and implement the requirements outlined in Resolution 8 and advised that consideration could be given to the issuing of a conditional building permit.

The proposed conditional building permit agreement requires the applicant to:

- Post security in the amount of \$20,000.00 for the purposes noted in the financial implications section of this Report

- To obtain before occupancy and not later than October 28, 2015 all approvals prerequisite to the issuance of a building permit
- To remove the “Subject Construction” and restore the lands by December 31, 2015, if all necessary approvals have not been obtained by October 28, 2015
- To only occupy one dwelling during the subject construction
- To register the agreement on title to the lands at their cost

The proposed agreement and the Building Code Act provide the following enforcement provisions:

“Enforcement of agreement

(6) If the chief building official determines that a building has not been removed or a site restored as required by an agreement under clause (3) (c), the chief building official may cause the building to be removed and the site restored and for this purpose the chief building official, an inspector and their agents may enter upon the land and into the building governed by the agreement at any reasonable time without a warrant. 1992, c. 23, s. 8 (6).

Lien

(7) If the building is in a municipality, the municipality shall have a lien on the land for the amount spent on the removal of the building and restoration of the site under subsection (6) and the amount shall have priority lien status as described in section 1 of the *Municipal Act, 2001* or section 3 of the *City of Toronto Act, 2006*, as the case may be. 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 3 (1).

The applicant is requesting the Township to consider the entering into of a Conditional Building Permit Agreement to facilitate the issuing of a conditional building permit to enable the applicant to proceed with construction in a timely fashion.

Financial Implications

The agreement requires the applicant to provide an unconditional irrevocable letter of credit from a chartered Canadian bank, in a form satisfactory to the Township in the amount of \$20,000.00, to guarantee the satisfactory completion of the subject construction or site restoration on the lands.

User Fee By-law No. 2013-074 indicates an additional fee of 20% of the residential permit fee for conditional permits.

Applicable Legislation and Requirements

Township of Puslinch Zoning By-law 19/85
 Building Code Act, 1992 as amended
 Planning Act, Sections 34 and 38

Attachments

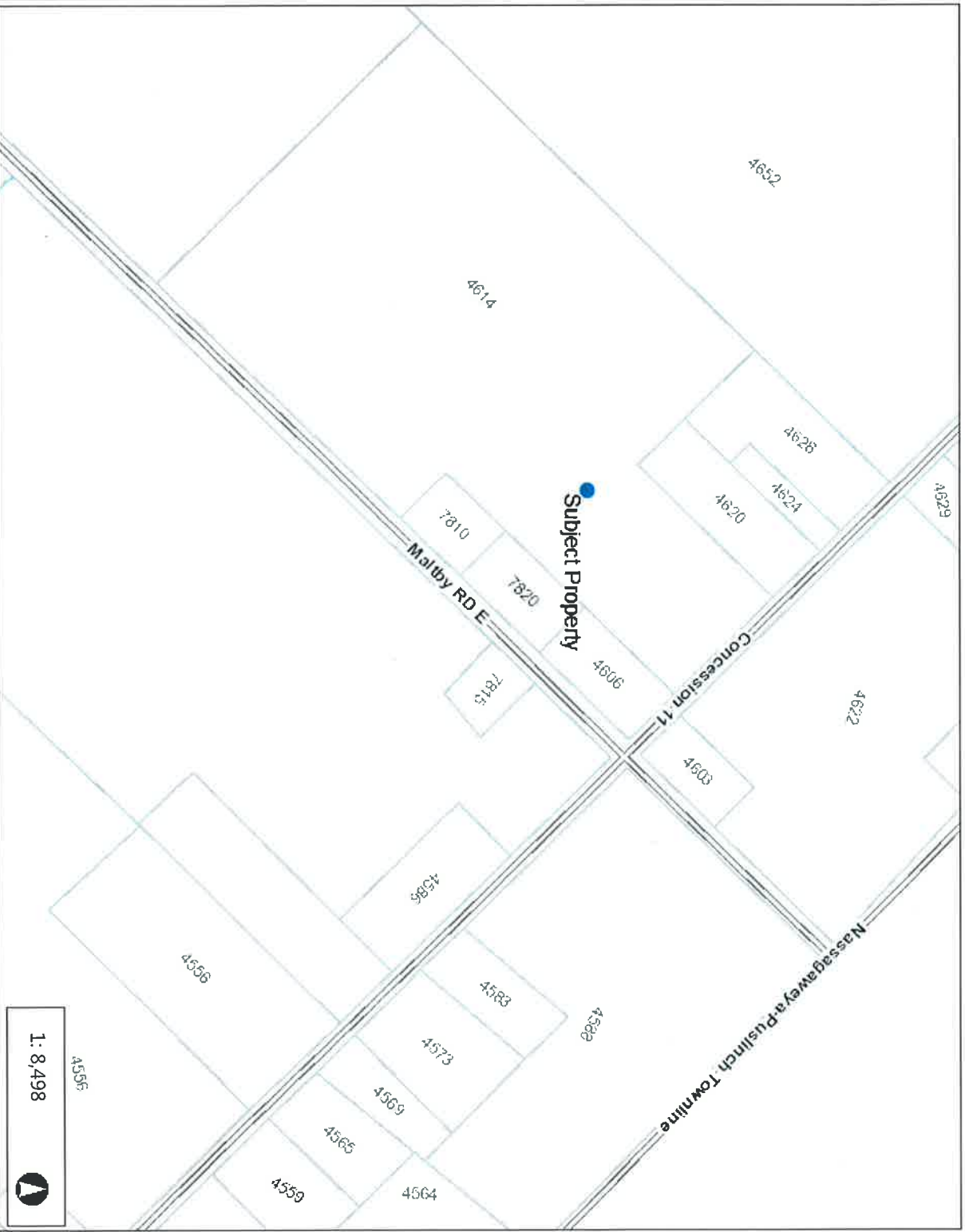
Key Map

Arial photograph



Explore Wellington

Map of Wellington County



1: 8,498



WGS_1984_Web_Mercator_Auxiliary_Sphere
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This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS IS NOT SURVEY DATA. Parcels - Teranet 2002, Wellington County 2014



Legend

- Municipal Offices
- OPP Stations
- Hospitals
- Fire Stations
- Information Centres
- Schools
- Post Offices
- Arenas
- Community Centres
- Curling Rinks
- Libraries
- Museums
- Park Parking Lots
- County Garages
- Parcels
- Local Road
- County Road
- Highway
- Railways
- Trails
- Building Footprints
- Waterbodies
- Watercourses
- Parks
- Urban Centre and Hamlets

Notes



1: 1,062



Legend

- Municipal Offices
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- County Garages
- Parcels
- Roads**
 - Local Road
 - County Road
 - Highway
- Railways
- Trails
- Building Footprints
- Waterbodies
- Watercourses
- Parks
- Municipalities

Notes

0.1 0 0.03 0.1 Kilometers

CONDITIONAL BUILDING PERMIT AGREEMENT

Table of Contents

1. Lands
2. Subject Construction
3. Conditional Permit
4. Applicant's Covenants
5. Site Restoration
6. Municipal Entry and Restoration
7. Security
8. Registration of Agreement
9. Notice
10. Other Applicable and Governing Laws
11. Agreement Not to be Called into Question
12. Interpretation of Agreement
13. Governing Law

Schedule "A" – Conditions of Approval

AGREEMENT FOR A CONDITIONAL BUILDING PERMIT

THIS AGREEMENT dated the 5th day of November 2014.

BETWEEN:

**Jeffrey Gordon Born
Vicki Marguerite Dickson**

(hereinafter called the "Applicant")

-and-

THE CORPORATION OF THE TOWNSHIP OF PUSLINCH

(hereinafter called the "Township")

WHEREAS the Applicant is the registered owner of certain lands in the Township and more particularly described in Section 1;

AND WHEREAS construction on the lands will require the issuance of a building permit under subsection 8(2) of the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended;

AND WHEREAS the Applicant has requested a conditional building permit (the "Conditional Permit") from the Township prior to meeting all requirements to obtain a building permit;

AND WHEREAS the Contractor has entered into an agreement to construct a structure on the lands described in Section 1;

AND WHEREAS the Township's Chief Building Official:

- (a) is satisfied that meeting the requirements for the issuance of a full building permit under subsection 8(2) of the *Building Code Act, 1992*, would unreasonably delay the proposed construction;
- (b) considers the restoration of the site to be feasible in the event that all the necessary approvals are not ultimately obtained by the Applicant;

AND WHEREAS the construction on the lands complies with by-laws enacted under s. 34 of the *Planning Act*;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants hereinafter expressed and other good and valuable consideration, the Parties hereto agree one with the other as follows:

1. LANDS SUBJECT TO AGREEMENT

The lands affected by this Agreement (hereinafter referred to as the "Lands") are as follows:

CON 10 PT LOT 15 RP 61R5385 PART 2 PT in the Township of Puslinch.

2. SUBJECT CONSTRUCTION

The construction affected by this Agreement (herein referred to as the "Subject Construction") is that construction proposed in a building permit application filed by the Applicant, on October 1, 2014.

3. CONDITIONAL BUILDING PERMIT

The Township acknowledges that the Chief Building Official is entitled to issue a Conditional Permit for the Subject Construction to be erected on the Lands provided that the Applicant agrees to assume all risks involved in commencing construction before every requirement for a building permit has been met, and to this end, hereby will indemnify and save harmless the Township from and against all claims arising from the issuance of the conditional permit.

4. APPLICANT'S COVENANTS

The Applicant hereby covenant and agree:

- (a) to obtain before the occupancy and not later than October 28, 2015 all approvals prerequisite to the issuance of a building permit;
- (b) to file any required plans and specifications of the Subject Construction by the date set out in Subsection 4(a);
- (c) to stop construction on the Lands and secure the Lands to the satisfaction of the Chief Building Official if:
 - (i) in the opinion of the Chief Building Official, any impediment arises to prevent the lawful continuation of the Subject Construction.
- (d) to remove the Subject Construction and restore the Lands by December 31, 2015 if all necessary approvals have not been obtained by the date set out in Subsection 4(a);
- (e) to comply with all development standards that are applicable to the Lands including but not limited to site servicing, grading, tree protection, fire protection, and storm water management;
- (f) to provide and maintain access for emergency vehicles and water supply to the satisfaction of the fire department;
- (g) without limiting the generality of the foregoing, to satisfy any specific conditions set out in Schedule "A" to this Agreement no later than the date set out in Subsection 4(a).

5. EXTENSION OF AGREEMENT

If the Chief Building Official has cause to believe that all approvals will not be met by the deadline set out in Subsection 4(a), but will be obtained within a reasonable amount of time; and at the Chief Building Official's sole discretion may extend the term of this Agreement by an amount of time that the Chief Building Official deems to be adequate to obtain the necessary approvals.

6. SITE RESTORATION

The restoration of the Lands referred to in this Agreement shall be to the conditions present at the time of the building permit application dated October 1, 2014 and shall include the removal of the Subject Construction, the replacement of all vegetative matter, the stabilization of slopes and the restoration of drainage patterns. Restoration must commence within 60 days of the date set out in Subsection 4(a) or at such later time as may be directed by the Chief Building Official and must be completed no later than December 31, 2015.

7. MUNICIPAL ENTRY AND RESTORATION

If the Chief Building Official determines that the Subject Construction has not been removed or the site restored as required by this agreement, the Chief Building Official may cause the Subject Construction to be removed and the Lands restored and for this purpose the Chief Building Official, an inspector and their agents may enter upon the Lands and into the buildings or structures governed by this Agreement at any reasonable time without a warrant.

8. SECURITY

- (a) The Applicant agrees to provide an unconditional irrevocable letter of credit from a chartered Canadian bank, in a form satisfactory to the Township in the amount of \$20,000.00; to guarantee the satisfactory completion of the subject construction or site restoration on the lands. The letter of credit shall be for term of this Agreement and shall provide for automatic renewal at the end of said term.
- (b) If the Chief Building Official determines that the Subject Construction has not been removed or the Lands have not been restored as required by this Agreement, the letter of credit may be drawn upon in full or in part, in the sole discretion of the Chief Building Official and the moneys used to restore the Lands as provided for in Section 6.
- (c) Should there be full compliance with this Agreement; the letter of credit will be returned to the Applicant.
- (d) Should the Township incur costs associated with the restoration of the Lands or the removal of any buildings or structures in excess of the amount of the letter of credit, the Township shall have a lien on the Lands for such amount having priority lien status in accordance with section 1 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

9. REGISTRATION OF AGREEMENT

- (a) This Agreement may be registered against the Lands and the Township is entitled to enforce its provisions against the current owner of the Lands and, subject to the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the Lands. All legal costs and expenses related to the registration of this agreement shall be paid by the Applicant;
- (b) Upon the issuance of a building permit pursuant to the building permit application referred to in Section 2, the Applicant shall be entitled to request that the Township shall provide the registered owner of the Lands with a release of this Agreement in a form that may be registered against title and all legal costs and expenses related to the registration of the release shall be paid by the Applicant.

10. NOTICE

- (a) If any notice is required to be given by the Township to the Applicant with respect to this Agreement, such notice shall be mailed, or delivered:

Jeffrey Gordon Born
 Vicki Marguerite Dickson
 4614 Concession 11 RR 1
 Puslinch, ON NOB 2J0

or such other address of which the Applicant has notified the Clerk, in writing, and any such notice mailed, or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

- (b) If any notice is required to be given by the Applicant to the Township with respect to this Agreement, such notice shall be mailed, or delivered:

Robert Kelly
 Chief Building Official
 7404 Wellington Rd 34
 Guelph, ON N1H 6H9

or such other address of which the Township has notified the Applicant, in writing, and any such notice mailed, or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

11. OTHER APPLICABLE OR GOVERNING LAWS

Nothing in this Agreement shall relieve the Applicant and the Contractor from compliance with all applicable municipal by-laws, laws and/or regulations or laws and/or regulations established by any other governmental body that may have jurisdiction over the Lands.

12. AGREEMENT NOT TO BE CALLED INTO QUESTION

The Applicant and the Contractor and its successors and assigns, will not call into question, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the Township's right to enter into and enforce this Agreement. This provision may be pleaded by the Township in any action or proceeding as an estoppel of any denial of such right.

13. INTERPRETATION OF AGREEMENT

This agreement shall be interpreted as follows:

- (a) The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of the Agreement.
- (b) This Agreement shall be construed with all changes in number and gender as may be required by the context.
- (c) Every provision of this Agreement by which the Applicant or any other person executing this Agreement is obligated in any way shall be deemed to include the words "at the expense of the Applicant" unless the context otherwise requires.
- (d) References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from to time to time and any successor statute thereto.
- (e) All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
- (f) Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.
- (g) The Applicant, and the Township agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.
- (h) All schedules attached to this Agreement form an integral and operative part of this Agreement.

14. GOVERNING LAW

This agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

IT IS HEREBY DECLARED THAT this Agreement and the covenants, provisions, conditions and schedules herein contained shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals duly attested to by their proper signing officers in that behalf.

**SIGNED, SEALED
& DELIVERED**

| | | |
|------------------|---|---------------------------------|
| |) | Jeffrey Gordon Born |
| |) | Vicki Marguerite Dickson |
| Applicant |) | |
| |) | _____ |
| |) | Name: |

'Schedule A'

Conditions of Approval

1. The Owner is to remove the original portion of the building upon obtaining occupancy or by December 31, 2015, whichever occurs first; so as to not create a zoning contravention with regard to more than one dwelling.
2. Only one dwelling is to be occupied at one time during the subject construction.

