

Thank you councilors for allowing me to speak to you today.

WHO / CROP

My name is John Bennett, and I am here representing the Coalition for Rural Ontario Environmental Protection.

We represent residents of rural Hamilton, including individuals, farmers, and small business owners. My main reason for speaking to you today is our concern with Special Exception 253 in the Bylaw to Create New zones for the rural area of Hamilton: This Special Exception would grandfather existing illegal landscaping operations in rural sections of Flamborough and Ancaster, and has no significant limitation or regulations on land use.

Landscape Ontario, a commercial lobby group, will have you believe that landscapers are part of a green and growing economy, engage in horticulture, and are akin to agricultural in many ways. In actual fact, these are semi-industrial businesses, the majority of whom do no growing at all and purchase their plant products elsewhere. Most of their operations have to do with building of retaining walls, concrete and stone patios, walkways, driveways, decks, fences sheds, excavating, grading and hardscaping. They use Heavy equipment,

dump trucks, front-end loaders, bobcats and snow removal machines. These are clearly semi-industrial commercial business, similar to paving businesses, which need to be located on commercially-zoned land.

What

These are the ongoing issues we have faced from illegal landscaping companies operating in our area.

- Noise: Operations up to 18/hours per day in summer, every day
- Winter snow removal machines being loaded late at night, early in the morning.
- Nuisance: 5:30 AM loading of vehicles, trailers, dump trucks, staff
- Illegal dumping of waste from jobs on property
- Incineration of waste, including pressure-treated wood, unattended fires and general environmental degradation of rural land
- Paving, grading and gravel filling of prime agricultural land:

Involvement

Our members have been directly involved for the past two years during the Public commentary phase of the by-

law zoning process, speaking to staff and councilors, and attending public meetings to make our views known

Dozens upon dozens of landscapers applied for this grandfathering exception, more to come in a subsequent bylaw still be written for later this summer. A total of 39 landscapers have been currently approved, and some of these want to reserve acres and acres of prime farmland for gravel, chemical and salt storage, truck parking, infill, and construction of multi-thousand-sq-ft buildings to house their equipment. Some of these are mom-and-pops, and consist of a single truck or trailer: These are not nuisances to anyone, and perhaps this is who the committee had in mind when they originally instructed staff to draft these exceptions. The larger companies, some of whom have existing commercial land in Hamilton, are the issue. Without significant regulations on hours of operation, lot setbacks, noise, dust and visual barriers, this will have the effect of defacto commercialization of prime agricultural land. Many of these will be the size of a large strip mall. Hamilton, rightly or wrongly, has a reputation as poor environmental steward. Imagine the stink when we're accused of Paving the greenbelt.

*A number of landscapers applied for and were denied SE 253 for various reasons – these operations were in the NEC lands, or had other reasons for their applications to be denied. So, we now have two classes of landscapers: The approved up-until-now-illegal businesses, and the landscapers that were denied approval, and are now known to the city as operating illegally. Oh, and a third classes: The landscapers who are located properly on commercial land, paying full-freight commercial taxes, and who now have to compete for bids against companies that are given a carte-blanche pass on any and all regulations, and do not have the expense of leasing commercial land. When these operations start losing bids because their competitors can undercut them by 50%, the first thing they will do is start cutting staff. The second thing they will do is look for a nice, agricultural property that has a grandfathering provision to allow a landscaping business, and then poof: Hamilton will have lost another commercial tenant. In fact, there is also a fourth class of landscapers: Those not in wards 12, 13 and 14 who *will* potentially be subject to strict, secondary-use standards as required by the*

Greenbelt Act. Those landscapers will therefore have another hurdle in competing against the entrenched low-cost cartel in Flamborough and Ancaster. We have an opinion on the suitability of this secondary-use provision as well, but that is for another day.

There is no argument for allowing clearly commercial business to download their costs onto rural residents. At the March 31 Planning Committee meeting, an argument was made that there was insufficient commercial space in Hamilton to absorb these businesses. However, a quick online search for commercial property indicates dozens of locations in Hamilton: Nebo Road, Ditton Road, South Service road and more, that can easily accommodate these operations.

That's my moral portion of my presentation.

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More importantly, though, is the legal aspect. We have retained a professional Land Planner, Environmental Law firm, and the Canadian Environmental Law Association to advise us. Our experts made it clear that municipalities do not have the right to enact by-laws that do not conform to the appropriate provincial acts, including the

Planning Act and the Greenbelt Act. We have informed Planning Staff and council of our position, and reiterate it. Your own planning staff recognizes this, and in Section 5.1 of the report in front of you, they state

5.1 “It is important to note that Special Exception 253 was created solely in response to the above motion and Planning Division staff are of the opinion that this Special Exception is not in conformity with the Greenbelt Plan.”

We have asked our legal counsel to review SE 253, and, we have received their opinion and provided it in electronic form to the chair and the clerk. I have printed copies here as well. If I may read the relevant sections:

... it is our opinion that this Exception contravenes the Planning Act, and, as such, Council has no authority to approve it.

Section 3(5)(b) of the Planning Act dictates that all decisions of municipal councils that affect a “planning matter” shall conform with Provincial Plans, which includes the Greenbelt Plan. Special Exemption 253 does not. Policy 3.1.3(1.) of the Greenbelt Plan establishes that only agricultural, agriculture-related and secondary uses are permitted within Prime Agricultural Areas. Exemption 253

applies to Ancaster and Flamborough, which are predominantly Prime Agricultural Areas (designated "Agriculture" in the Rural Hamilton Official Plan). Stand-alone landscape contracting establishments, i.e. establishments that are unrelated to the principle use of the property, do not meet the definition of agricultural, agriculture-related or secondary uses. Therefore, Council has no authority to permit them within Prime Agricultural Areas.

The only authority Council has to permit landscape contracting establishments in the Agricultural designations in Flamborough and Ancaster is where these establishments are agriculture-related, secondary to the primary use, or where, in accordance with Policy 4.5 of the Greenbelt Plan, the landscape contracting establishments already legally exist. Exception 253 attempts to apply to all existing landscape contracting establishments, legal and illegal. The Greenbelt Plan does not allow this and Council has no authority to pass a by-law to create an exception from the Greenbelt's prohibitions.

For this reason, we are of the opinion that Special Exception 253 contravenes the Planning Act and Council has no authority to approve it.

So, in summary, we have been putting up with years of noise, nuisance, pollution, heavy equipment dumping at all hours of the day, backfilling of prime agricultural land by companies that should know better. Enforcement of existing by-laws, fire regulations and noise ordinances is difficult and requires our members to babysit problematical firms. The committee's desire to legalize these operations will result in virtually no effective enforcement, and the ability of these firms to do untold damage to acres and acres of rural Hamilton – that which the province calls the "Protected Countryside". The optics are terrible, and council is setting up at least four separate classes of landscaping operations, most of whom will not be able to compete with the grandfathered few. Finally, there is no legal basis for grandfathering these operations, and relevant provincial law makes it clear that council cannot do so.

I urge you to reconsider and rescind Special Exception 253 Grandfathering these firms, and to re-examine how best to define the related secondary use provisions. We are more than happy to make someone available to provide further commentary.

Thank you very much for your time and attention.