



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

| | |
|---------------------------|--|
| TO: | Chair and Members Planning Committee |
| COMMITTEE DATE: | July 11, 2017 |
| SUBJECT/REPORT NO: | Amendment to Zoning By-law No. 05-200 for Lands Located at 49 Inksetter Road, Flamborough (PED17115) (Ward 14) |
| WARD AFFECTED: | Ward 14 |
| PREPARED BY: | Ryan Ferrari 905-546 2424 Ext. 5865 |
| SUBMITTED BY: | Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department |
| SIGNATURE: | |

RECOMMENDATION

That **Zoning By-law Amendment Application ZAA-17-026, by Joe Loewith of Joe Loewith & Sons (Owners)**, for a modification to the Rural (A2) Zone and the Conservation / Hazard Land - Rural (P6) Zone in order to prohibit the construction of a single detached dwelling and residential care facility and to recognize the lot size of the lands to be retained as shown on Appendix "A" to Report PED17115, be **APPROVED** on the following basis:

- (a) That the draft By-law, attached as Appendix "B" to Report PED17115, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council;
- (b) That the amending By-law be added to Schedule "C" of Zoning By-law No. 05-200; and,
- (c) That the proposed change in zoning is consistent with the Provincial Policy Statement (2014), conforms to the Greenbelt Plan (2017), and complies with the Rural Hamilton Official Plan (RHOP).

EXECUTIVE SUMMARY

The purpose of this Zoning By-law Amendment application is to rezone the subject lands to prohibit the construction of a single detached dwelling and a residential care facility on a portion of the consolidated farm parcel known as 49 Inksetter Road,

Flamborough. The requested amendment is required to satisfy the lot creation policies of the Provincial Policy Statement (PPS), the Greenbelt Plan (2017), and the Rural Hamilton Official Plan (RHOP). This application will also add a modification to the Rural (A2) Zone to recognize the lot area of the retained agricultural lands. The amendment will also address Condition Nos. 3 and 4 of Consent for Severance approval FL/B-16:21 to facilitate the severance of a surplus farm dwelling as a result of a consolidation of non-abutting farm parcels.

The proposed application has merit and can be supported as it is consistent with the Provincial Policy Statement (2014), conforms to the Greenbelt Plan (2017), and complies with the Rural Hamilton Official Plan (RHOP).

Alternatives for Consideration – See Page 14

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: None

Staffing: None

Legal: As required by the *Planning Act*, Council shall hold at least one (1) Public Meeting to consider an application for a Zoning By-law Amendment.

HISTORICAL BACKGROUND

Consent for Severance Application FL/B-16:21

In March of 2014, Joe Loewith and Son's acquired the subject lands as part of a farm consolidation after leasing and farming the lands since 1976. In March of 2016, an application was made to the Committee of Adjustment in order to sever an existing single detached dwelling from the farm operation. The application was tabled *sine die* due to the eastern portion of the property being under NEC Development Control and for which an NEC Development Permit was required to sever the single detached dwelling as part of a farm consolidation. The application returned to the Committee of Adjustment in January of 2017. The applicant had applied for and received conditional approval for the NEC Development Permit and the Committee was satisfied that the NEC Development Permit would be issued accordingly. The Consent application was approved at the Committee of Adjustment Hearing on January 19 2017, subject to the issuance of an NEC Development Permit. The NEC Development Permit was issued on March 14, 2017.

Niagara Escarpment Commission (NEC) Development Permit

As of July 1, 2017, the policies of the recently released Niagara Escarpment Plan (2017) apply to any planning decision. The future development proposed in this application conforms to the Plan as the eastern portion of the subject lands, including the lands to be severed, is under NEC Development Control and is designated "Escarpment Rural". The applicant obtained a Development Permit for the purposes of severing the surplus farm dwelling as Condition No. 2 of the approval of Consent Application FL/B-16:21 (Appendix "C" of Report PED17115).

The NEC Development Permit #11169/W/R/2015-2016/424 was issued on March 14, 2017 with a condition that the applicant register on title an agreement that the retained lot will only be used for agricultural purposes. The agreement was registered on title on March 6, 2017.

Description of the Subject Lands

As shown on the Location Map attached as Appendix "A" to Report PED17115, the subject lands are zoned Rural (A2) Zone, Conservation / Hazard Land – Rural (P6) Zone, Conservation / Hazard Land - Rural (P7) Zone and Settlement Residential (S1, 52). In addition, the eastern portion of the retained lands are under Niagara Escarpment Plan Development Control. The western portion of the lands are within the "Copetown Rural Settlement Area".

The current and future use of the retained lands is Agricultural. The severed lands contain an existing single detached dwelling and no part of the severed lands has been used for agricultural purposes.

Proposal

The purpose of Zoning By-law Amendment application ZAA-17-026 is to rezone a portion of the subject lands from the Rural (A2) Zone and the Conservation / Hazard Land - Rural (P6) Zone to a site specific Rural (A2, 613) Zone, and Conservation / Hazard Land - Rural (P6, 616) Zone, to prohibit the development of a single detached dwelling and residential care facility in order to satisfy Condition Nos. 3 and 4 of Consent Application FL/B-16:21 where an existing farm dwelling was severed through a farm consolidation severance. The application will also add a site specific exception to the Rural (A2) Zone in order to recognize the lot area of 37.49 ha. (92.63 ac.) for the retained lands.

Chronology

| | |
|---------------------------|---|
| <u>January 19, 2017:</u> | Consent for Severance application FL/B-16:21 was heard at the Committee of Adjustment and was approved. |
| <u>February 16, 2017:</u> | Consent for Severance application FL/B-16:21 received final and binding approval. |
| <u>February 28, 2017:</u> | Zoning By-law Amendment Application ZAA-17-026 was received. |
| <u>March 8, 2017:</u> | Zoning By-law Amendment Application ZAA-17-026 was deemed complete. |
| <u>March 14, 2017:</u> | NEC Development Permit was issued by the Niagara Escarpment Commission in order to sever the subject lands. |
| <u>March 19, 2017:</u> | Zoning By-law Amendment Application was circulated to 68 property owners within 120m of the subject lands. |
| <u>April 5, 2017:</u> | Public Notice sign was installed on the subject lands. |
| <u>June 14, 2017:</u> | Public notice sign was updated to include Public Meeting Date. |
| <u>June 23, 2017:</u> | Circulation of Notice of Public Meeting to 68 property owners within 120m of the subject lands. |

Details of Submitted Application

Location: 49 Inksetter Road, Flamborough (see Appendix “A” to Report PED17115)

Agent: Ed Fothergill

Applicant / Owner(s): Ben Loewith
Joe Loewith & Sons

| | |
|--|--|
| <u>Property Description</u> <u>(Lands to be retained)</u> As shown on Appendix “D” to Report PED17115 | <u>Total Lot Area:</u> ± 37.49 ha (92.63 ac) <u>Total Lot Frontage:</u> Approx. 334.61m (Inksetter Road) Approx. 99.33m (Highway No. 52) |
|--|--|

Lot Depth: Approx. 718.09 m

Property Description:

(Lands to be conveyed): Total Lot Area: 4.04 ha (9.99 ac)

As shown on

Appendix “D” to

Report PED17115

Total Lot Frontage: Approx. 140.00 m

Total Lot Depth: Approx. 265.00 m

Existing Land Use and Zoning

| | <u>Existing Land Use</u> | <u>Existing Zoning</u> |
|------------------------------|--|---|
| <u>Subject Lands:</u> | Agriculture Single Detached Dwelling Woodlot | Rural (A2) Zone, Conservation / Hazard Land (P6) Zone, Conservation / Hazard Land (P7) Zone; and Settlement Residential (S1, 52) |

Surrounding Lands:

| | | |
|--------------|--|--|
| North | Agriculture Single Detached Dwellings | Agriculture (A1) Zone, Rural (A2) Zone, Settlement Residential (S1) Zone |
| South | CN Rail Corridor and Single Detached Dwellings | Rural (A2) Zone, Settlement Residential (S1) Zone |
| East | Agriculture Single Detached Dwellings | Rural (A2) Zone |
| West | Single Detached Dwellings and Flamborough Hills Golf Club | Agriculture (A1) Zone, Settlement Residential (S1, 52) Zone, Open Space (P4, 131) Zone, Conservation / Hazard Land Rural (P6) |

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Provincial Planning Policy Framework

The Provincial planning policy framework is established through the *Planning Act* (Section 3) and the Provincial Policy Statement (PPS 2014). The *Planning Act* requires that all municipal land use decisions affecting planning matters be consistent with the PPS.

The mechanism for the implementation of the Provincial plans and policies is through the Official Plan. Through the preparation, adoption and subsequent Ontario Municipal Board approval of the City of Hamilton Official Plans, the City of Hamilton has established the local policy framework for the implementation of the Provincial planning policy framework. As such, matters of provincial interest (e.g. efficiency of land use, balanced growth and environmental protection) are reviewed and discussed in the Official Plan analysis below.

As the application for a change in zoning complies with the Rural Hamilton Official Plan, it is staff's opinion that the application is:

- Consistent with Section 3 of the *Planning Act*, and,
- Consistent with the Provincial Policy Statement (2014).

Greenbelt Plan (2017)

The *Greenbelt Act* requires that all municipal land use decisions made under the *Planning Act* conform to the Greenbelt Plan (2017). As of July 1, 2017 all planning decisions must conform to the new Greenbelt Plan. The Greenbelt Plan (2017) designates the subject lands as "Protected Countryside".

The following policies amongst others are applicable:

"1.2.2.1 Protected Countryside Goals

Agricultural Viability and Protection

- c) Protection of prime agricultural areas by preventing further fragmentation and loss of the agricultural land base caused by lot creation and the redesignation of prime agricultural areas;

3.1.4.2 Rural lands may contain existing agricultural operations and provide important linkages between prime agricultural areas as part of the overall

Agricultural System. Normal farm practices and a full range of agricultural uses, agriculture-related uses and on-farm diversified uses are supported and permitted. Proposed agriculture-related uses and on-farm diversified uses should be compatible with and should not hinder surrounding agricultural operations. Criteria for all these uses shall be based on provincial Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas.

- 4.5.1 All existing uses are permitted.
- 4.5.2 Single dwellings are permitted on existing lots of record, provided they were zoned for such as of the date the Greenbelt Plan came into force. Municipalities are encouraged to retain existing lots of record for *agricultural uses* and discourage non-agricultural uses where appropriate."

With regards to the new Greenbelt Plan (2017) the goal is to retain and protect existing prime agricultural areas from further fragmentation. As the lands proposed to be severed do not contain any agricultural farm land and the retained lands will continue to remain as an agricultural use the proposal conforms with the Greenbelt Plan (2017). In addition to the above policies the Greenbelt Plan (2017) includes the provision for a full range of agricultural uses on lands designated "Protected Countryside" to which the current use of the subject land conforms. As the single detached dwelling exists on an existing lot of record and the Zoning By-law permits a single detached dwelling the proposal is in keeping with the new Greenbelt Policies.

- "4.6.1 f) 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."

In addition to the above policies, the Greenbelt Plan (2017) permits the severance of a residence surplus to a farm operation. It was found, through the consent application process that the severance complied with the lot creation policies of the Greenbelt Plan (2017). The new Greenbelt Plan (2017) continues to enforce the same policies regarding lot creation and this application serves to ensure that the retained farm parcel cannot be developed for a single detached dwelling. The proposed severed parcel contains an existing single detached dwelling and the land surrounding the property is of a minimum size to accommodate appropriate services for the existing dwelling.

Therefore, the proposal conforms to the Greenbelt Plan (2017).

Rural Hamilton Official Plan

The subject lands are designated “Greenbelt Protected Countryside”, “Niagara Escarpment Rural Area” and “Rural Settlement Area” on Schedule “A”- Provincial Plans of the RHOP. In addition, the subject lands are within the “Greenbelt Natural Heritage System” on Schedule B – Natural Heritage System. The subject lands are designated “Rural” on Schedule “D” – Rural Land Use Designations in the RHOP and “Copetown Rural Settlement Area” in Volume 2: Map 2- Copetown Rural Settlement Area in the RHOP.

The following policies, amongst others, apply to the subject lands:

- “C.1.1.4 On lands located within Rural Hamilton and identified as Niagara Escarpment Rural Area on Schedule A – Provincial Plans, the following policies shall apply:
- c) Where lands are designated Rural on Schedule D – Rural Land Use Designations, the policies in Section D.4, Rural Designation of this Plan shall apply.
- C.1.1.6 To minimize the impact and further encroachments in the Escarpment Environment, for the lands located within the Niagara Escarpment Plan area identified on Schedule A – Provincial Plans, the following policies shall apply:
- c) No new lots shall be created in Escarpment Natural or Protection Areas unless such lot creation is for the purposes of correcting conveyances, enlarging existing lots or acquisition by a public body or authority, and to allow surplus farm dwelling severances on the Escarpment Protection or Escarpment Rural Areas.”

Based on the preceding Policy, the proposal to allow a surplus farm dwelling severance is permitted and an NEC Permit has been issued.

For the lands designated “Rural”, the following policies, amongst others, are applicable:

“D.4.1 Uses permitted in the Rural designation are limited to the uses permitted in Section D.2.0, Agriculture Designation of this Plan,

D.2.1 Permitted Uses

Uses permitted in the Agriculture designation are limited to *agricultural uses*, *agricultural-related* commercial and *agricultural-related* industrial uses and on-farm *secondary uses* as set out in the following policies.

C.3.1.4 The following uses shall be permitted in the Agriculture, Specialty Crop, and Rural designations, provided the applicable conditions are met: (OPA (R)-5)

a) Except as permitted in Sections D.2.1.1.4 and C.3.1.4 b) and c) of this Plan, a maximum of one dwelling per lot shall be permitted in designations where residential uses are permitted. The Zoning By-law shall limit permitted dwellings to a maximum of one residence per lot in designations where residential uses are permitted;”

With regards to the above policies, the subject lands will continue to permit Agricultural Uses as well as Agricultural Related Uses subject to the policies of the Rural Designation of the RHOP. The RHOP also permits a maximum of one dwelling per lot in the Rural Designation to which the policy will be met on the severed lands. This application will serve to amend the Zoning By-law 05-200 on the retained lands so that a residential dwelling would not be permitted.

The following policies, amongst others, apply with respect to the Greenbelt Natural Heritage System:

“C.2.3.2 *Core Areas* include *key natural heritage features*, *key hydrologic features*, including any associated *vegetation protection zones*, and provincially significant and *local natural areas* that are more specifically identified by Schedules B-1 to B-8 - Detailed Natural Heritage Features.

C.2.3.3 Any *development* or *site alteration* within or adjacent to *Core Areas* shall not negatively impact their environmental features or *ecological functions*.”

Natural Heritage Planning staff have reviewed the proposal and indicated that the subject lands contains Core Areas (Significant Woodland) and areas regulated by both the Hamilton Conservation Authority and Grand River Conservation Authority.

All of the natural features on the property are located on the retained lands. Staff support the Zoning By-law Amendment to prohibit any future construction of a dwelling on these lands as it will assist in protecting the natural heritage features and the agricultural use of the lands, which meets the intent of the Greenbelt Plan and the RHOP.

This Zoning By-law Amendment serves to satisfy the condition imposed by the RHOP under the following policy:

“F.1.14.2.8

- c) In cases of a farm dwelling made surplus as a result of acquisition as part of a farm operation that does not result in the merging in title of parcels of land, applications for severance of the surplus dwelling shall comply with the following conditions:
 - iv) Prior to granting of final consent, one of the following conditions shall be met for the retained farm parcel as a result of a surplus farm dwelling severance:
 - 1. The land owner shall apply for and receive final approval to rezone the farm parcel to prohibit the construction of a dwelling unit; or,
 - 2. The land owner shall grant in favour of the City, a restrictive covenant which prohibits the construction of any dwelling unit.”

This application is to satisfy Policy F.1.14.2.8 c) iv) 1.

City of Hamilton Zoning By-law No. 05-200

The subject lands are currently zoned Settlement Residential (S1, 52), Conservation / Hazard Land – Rural (P6), Conservation / Hazard Land – Rural (P7) and Rural (A2). Agriculture is a permitted use in all zones on the subject lands. The lands to be severed are zoned Rural (A2) Zone and contain an existing single detached dwelling which is a permitted use. The lands to be retained are zoned Settlement Residential (S1, 52), Conservation / Hazard Land – Rural (P6), Conservation / Hazard Land – Rural (P7) and Rural (A2) Zones and are currently being used for agricultural purposes. Agriculture is a permitted use within all of the zones on the retained lands.

Zoning By-law Amendment application ZAA-17-026 is to modify the existing Rural (A2) and Conservation / Hazard Land – Rural (P6) Zones that are on the retained lands and outside of the “Copetown Rural Settlement Area” and the Conservation / Hazard Land – Rural (P7) to prohibit the development of a single detached dwelling and residential care facility.

RELEVANT CONSULTATION

The following departments and agencies had no comments or objections:

- Forestry and Horticulture Section, Public Works Department

The following departments and agencies submitted comments:

Growth Management, (Planning and Economic Development Department) indicated that the lands to be conveyed will remain as 49 Inksetter Road, and the lands to be retained will be assigned the municipal address of 44 Highway No. 52.

Public Consultation:

In accordance with the provisions of the *Planning Act* and Council's Public Participation Policy, a Notice of Complete Application and Preliminary Circulation was circulated to 68 property owned within 120 m of the subject property on March 15, 2017, requesting public input on the application. A Public Notice sign was also posted on the property on April 4, 2017 and updated on June 14, 2017 with the date of the Public Meeting. Notice of the Public Meeting was given in accordance with the requirements of the *Planning Act* on June 23, 2017. Staff did not receive any public input on the application.

Public Consultation Strategy:

As per the City's Public Consultation and Strategy Guidelines, the applicant proposed a consultation strategy through the notice requirements of the previous Consent to Sever application through which notice was given under Section 53 of the *Planning Act*. Neighbours within 60 m of the subject property were notified of the application. No written concerns were received from the public and no members of the public attended the public meeting to express any concerns before the Committee of Adjustment.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

1. The proposed Zoning By-law Amendment application has merit and can be supported for the following reasons:

- (i) It is consistent with the Provincial Policy Statement, and conforms to the Greenbelt Plan (2017);
 - (ii) It complies with the policies of the RHOP; and,
 - (iii) The proposed amendment satisfies Conditions Nos. 3 and 4 of Consent for Severance application FL/B-16:21, which was approved by the Committee of Adjustment on January 19, 2017 (see Appendix "C" to Report PED17115).
2. The policies of the PPS and Greenbelt Plan (2017) indicate that a residence may be severed as surplus to a farming operation. It was found, through the Consent Application process, the application was consistent with the PPS and conforms to the Greenbelt Plan in effect at the time of the application. The PPS indicates that the intent of the plan is to maintain Agricultural Uses for the long-term period of the Plan and the restriction of development of the subject lands is consistent with the PPS. The Greenbelt Plan supports and permits Agricultural Uses on lands located outside of prime agricultural and specialty crop lands as designated within the Plan. Staff are of the opinion that the application is consistent with the PPS and conforms to the Greenbelt Plan (2017) by restricting the development of a single detached dwelling and residential care facility on the subject lands in order to preserve the existing farm practice.
3. The proposal complies with the policies in the Rural Hamilton Official Plan (RHOP) which speak to surplus farm dwelling severances as a result of a farm consolidation. This application is made with respect to fulfilling the requirement that a Zoning By-law Amendment is required as a condition of a surplus farm dwelling severance. The application seeks to preserve the primary long-term land use of agriculture within the Rural area. Therefore, staff are supportive of the removal of single detached dwellings and residential care facilities as permitted uses from the "A2" and "P6" zones. Staff note that no site-specific amendments were required to the Conservation / Hazard Land Rural (P7) Zone because this zone does not permit residential uses as-of-right. No further site-specific amendment is required for the Settlement Residential (S1, 52) Zone as the lands have been farmed by the applicant since 1976 and the intent is for the lands to continue to be farmed. Though the Settlement Residential (S1, 52) Zone does not explicitly state that Agriculture is a permitted use, it was never the intent of the By-law to remove the right to farm within the undeveloped portions of Rural Settlement Areas as all Rural Settlement Areas began as agricultural areas that are slowly continuing to be developed over time. As a result, staff anticipate that the subject lands within the "Copetown Rural Settlement Area" and zoned Settlement Residential (S1, 52) Zone will be developed in accordance with the applicable Rural Settlement Area Policies, however, in the interim the Agricultural Use is considered a legal non-conforming use that is continuing on the subject lands.

The following uses will continue to be permitted on the retained farm parcel in accordance with the Rural "A2" Zone:

- Abattoir
- Agriculture;
- Agricultural Processing Establishment-Stand Alone;
- Agricultural Storage Establishment;
- Farm Product Supply Dealer;
- Kennel;
- Livestock Assembly Point;
- Secondary Uses to Agriculture; and,
- Veterinary Service – Farm Animal.

The following uses will continue to be permitted on the retained farm parcel in accordance with the Conservation / Hazard Land Rural (P6) Zone:

- Agriculture;
- Conservation;
- Flood and Erosion Control Facilities;
- Recreation, Passive; and,
- Secondary Uses to Agriculture.

4. The proposed modification to permit a reduced minimum lot area for the retained agricultural lands to be 37.49 ha instead of the required minimum lot area of 40.4 ha can be supported. The retained lands have supported the existing agricultural operation for decades and is modestly (3.99 ha.) smaller than the minimum lot size requirement. The proposed lot area will not hinder the future agricultural viability of the lands. Additionally, the lands to be severed has contained the existing single family dwelling and has not been in agricultural production since 1976.

Therefore, staff support this modification.

ALTERNATIVES FOR CONSIDERATION

Should the application be denied, the conditional approval of Consent Application FL/B-16:21 will lapse, and the applicant will not be able to sever the surplus dwelling from the property. The use of the subject property will continue to be regulated by the existing Rural (A2) Zone, the Settlement Residential (S1, 52) Zone, the Conservation / Hazard Land Rural (P6) Zone, and the Conservation / Hazard Land Rural (P7) Zone in the City of Hamilton Zoning By-law No. 05-200.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

APPENDICES AND SCHEDULES ATTACHED

Appendix A: Location Map

Appendix B: Draft Amendment to Zoning By-law No. 05-200

Appendix C: Committee of Adjustment Decision for FL-B/16:21

Appendix D: Proposed Land Severance Sketch

RF:jp