



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	September 4, 2018
SUBJECT/REPORT NO:	Applications to Amend the City of Hamilton Rural Hamilton Official Plan and Zoning By-law No. 05-200 for Lands Located at 163 and 167 Highway No. 5 West, Flamborough (PED18161) (Ward 15)
WARD AFFECTED:	Ward 15
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

- (a) That **Rural Hamilton Official Plan Amendment Application RHOPA-18-019 by KENEL INC. (Owner)**, to refine the boundary of the existing Site Specific Area R-4 to reflect the existing use of the lands located at 167 Highway No. 5 West, Flamborough as shown on Appendix “A” to Report PED18161, be **APPROVED** on the following basis:
- (i) That the draft Official Plan Amendment, attached as Appendix “B” to Report PED18161 be enacted by City Council;
 - (ii) That the proposed Official Plan Amendment is consistent with the Provincial Policy Statement (2014) and conforms to the Greenbelt Plan (2017).
- (b) That **Zoning By-law Amendment Application ZAR-18-019, by KENEL INC. (Owner)**, for a change in zoning from the Open Space (P4, 80) Zone to the Rural (A2, 104) Zone and from the Rural (A2, 104) Zone to the Open Space (P4, 80) Zone in order to recognize the locations of the existing Garden Centre and Golf Course for a portion of the lands located at 163 and 167 Highway No. 5 West, in accordance with the conditions of consent approval as shown on Appendix “A” to Report PED18161, be **APPROVED** on the following basis:

- (i) That the draft By-law, attached as Appendix “C” to Report PED18161, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council;
- (ii) That this By-law will comply with the Rural Hamilton Official Plan upon approval of Rural Hamilton Official Plan Amendment No. XX.

EXECUTIVE SUMMARY

The purpose of the subject applications are to address the encroachment of the existing Garden Centre onto the adjacent Golf Course lands, as well as address the encroachment of the Golf Course lands onto the north portion of the Garden Centre by refining the boundary in the Rural Hamilton Official Plan (RHOP) of the existing Rural Site Specific Area for the lands located at 167 Highway No. 5 West in the RHOP.

Furthermore, the proposed Zoning By-law Amendment will recognize a minor lot line adjustment as well as the existing conditions of the Garden Centre by modifying the Rural (A2, 104) Zone to add performance standards for setbacks and outdoor storage. No changes are proposed to the Open Space (P4, 80) Zone. Staff note that the amendment is required to satisfy Condition No. 3 of Consent for Severance Approvals FL/B-18:29, FL/B-18:30, FL/B-18:31 and FL/B-18:32 attached as Appendix “E” to Report PED18161, in accordance with the approved lot line adjustment.

The applications have merit and can be supported as they are consistent with the Provincial Policy Statement (PPS 2014), conform to the Greenbelt Plan (2017) and comply with the policies of the RHOP subject to the required amendment.

Alternatives for Consideration – See Page 15

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: As required by the *Planning Act*, Council shall hold at least one public meeting prior to considering applications for an Official Plan Amendment and Zoning By-law Amendment.

HISTORICAL BACKGROUND

Proposal

The subject properties are located west of Clappison's Corners along Highway No. 5 West (see Location Map attached as Appendix "A" to Report PED18161). The two properties are owned by the same family and directly abut one another. The Golf Course, known as "Rock Chapel Golf Centre" (167 Highway No. 5 West) is intended to continue to be retained and operated by the family while the lands utilized for the Garden Centre, known as "The Dirt Depot" (163 Highway No. 5 West) is intended to be sold to the current tenant of the Garden Centre.

Over time the land uses have encroached onto one another thereby resulting in some of the structures at 163 Highway No. 5 West (Garden Centre) being constructed on the Golf Course lands and some structures belonging to 167 Highway No. 5 West (Golf Course) being constructed on the Garden Centre lands. Specifically, 167 Highway No. 5 West (Golf Course) has constructed golf nets on the northern part of 163 Highway No. 5 West (Garden Centre). The 163 Highway No. 5 West (Garden Centre) property has constructed various outdoor bulk material storage areas on the east, north and west sides of the property for approximately ±911m² of encroachments onto 167 Highway No. 5 West (Golf Course).

In order to address the ownership on title for the sale of the Garden Centre lands, a Consent Application for a lot line adjustment was submitted and subsequently conditionally approved.

Consent for Severance Applications FL/B-18:29, FL/B-18:30, FL/B-18:31 and FL/B-18:32

On February 21, 2018, four separate applications were submitted to the Committee of Adjustment in order to sever three parcels of land from the Golf Course lands located at 167 Highway No. 5 West for the purposes of merging with the Garden Centre lands located at 163 Highway No. 5 West and one parcel of land from the Garden Centre lands to be merged on title with the Golf Course lands. The applications were heard at the Committee of Adjustment on April 26, 2018 and were approved. The decisions became final and binding on May 24, 2018 with the condition that the applicant received final and binding approval of a Zoning By-law Amendment (attached as Appendix "D" to Report PED18161).

Rural Hamilton Official Plan Amendment

Upon further review of the initial application, it was determined that a Rural Hamilton Official Plan Amendment was required in order to implement the lot line adjustment. The purpose of the RHOP Amendment is to refine the boundary of the Rural Site Specific Area R-4 in accordance with the newly approved lot line adjustment boundaries as per approved consent applications FL/B-18:29, FL/B-18:30, FL/B-18:31 and FL/B-18:32.

Zoning By-law Amendment

In accordance with the consent approvals, this Zoning By-law Amendment will adjust the zoning boundaries for the respective properties according to the newly approved property lines and satisfy Condition No. 3 of Consent for Severance Applications FL/B-18:29, FL/B-18:30, FL/B-18:31 and FL/B-18:32 respectively. The applicant applied for a change in zoning from Open Space (P4, 80) Zone to Rural (A2, 104) Zone and from Rural (A2, 104) Zone to Open Space (P4, 80) Zone.

No new development is proposed, however, the Amendment will also recognize the existing setbacks of various structures from the proposed new property lines for 163 Highway No. 5 West (Garden Centre). No modifications for 167 Highway No. 5 West (Golf Course) are being requested.

Description of the Subject Lands

Chronology

- February 23, 2018: Application for a Zoning By-law Amendment ZAR-18-019 was received.
- March 23, 2018: Application for Zoning By-law Amendment ZAR-18-019 deemed complete.
- April 3, 2018: Application for Zoning By-law Amendment ZAR-18-019 was circulated to 22 property owners within 120m of the subject lands.
- April 10, 2018: Public Notice sign was installed on the subject lands.

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April 26, 2018: Consent for Severance applications FL/B-18:29, FL/B-18:30 FL/B-18:31 and FL/B-18:32 were heard at the Committee of Adjustment and approved.

May 24, 2018: Consent for Severance applications FL/B-18:29, FL/B-18:30 FL/B-18:31 and FL/B-18:32 were final and binding.

August 1, 2018: Urban Hamilton Official Plan Amendment Application RHOPA-18-019 was received.

August 8, 2018: Urban Hamilton Official Plan Amendment Application RHOPA-18-019 deemed complete.

August 8, 2018: Public Notice sign was updated to include Public Meeting Date.

August 17, 2018: Notice of Complete Application and Preliminary Circulation for Official Plan Amendment Application RHOPA-18-019 and Circulation for the Notice of Public Meeting for Official Plan Amendment Application RHOPA-18-019 and Zoning By-law Amendment Application ZAR-18-019 sent to 22 property owners within 120 m of the subject lands.

DETAILS OF SUBMITTED APPLICATION

Location: 163 and 167 Highway No. 5 West, Flamborough (see Appendix "A" to Report PED18161)

Agent: IBI Group Inc. c/o Tracy Tucker

Applicants / Owners: Paul & Albert Kenel

Property Description
(163 Highway No. 5 West)
As shown on Appendix
"E" to Report PED18161

<u>Total Lot Area:</u>	± 48.05 ha (118.74 ac)
<u>Total Lot Frontage:</u>	215 m
<u>Lot Depth:</u>	682.51 m

Servicing No Municipal Services

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Property Description

<u>(167 Highway No. 5 West):</u>	<u>Total Lot Area:</u>	0.87 ha (2.15 ac)
As shown on Appendix	<u>Total Lot Frontage:</u>	84 m
“E” to Report PED18161	<u>Total Lot Depth:</u>	983 m

Servicing No Municipal Services

Existing Land Use and Zoning

<u>Subject Lands:</u>	<u>Existing Land Use</u>	<u>Existing Zoning</u>
163 Highway No. 5	Garden Centre	Rural (A2, 104) Zone
167 Highway No. 5	Golf Course	Open Space (P4, 80) Zone

Surrounding Lands:

North:	Golf Course	Open Space (P4, 80) Zone
South:	Agriculture Single Detached Dwellings	Rural (A2) Zone
East:	Golf Course	Open Space (P4, 80) Zone
West:	Agriculture Single Detached Dwellings	Rural (A2) Zone

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Provincial Policy Statement (2014)

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.

“1.1.4.1 Healthy, integrated and viable *rural areas* should be supported by:

- a) building upon rural character, and leveraging rural amenities and assets;
- f) promoting diversification of the economic base and employment opportunities through goods and services, including value-added products and the sustainable management or use of resources;”

The subject lands are located within the rural area as defined in the PPS (2014). Both the Garden Centre and Golf Course provide an opportunity to diversify the rural economic base by providing alternative goods and services to the overall rural community and the applications will permit the continued use of the subject properties.

The purpose of the OPA is to refine the boundaries of the uses, which are permitted. No new services are required in order to permit the uses to continue on their respective properties.

Therefore, the proposal is 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). The Greenbelt Plan (2017) designates the subject lands as “Prime Agricultural Area” within the “Protected Countryside”. The following policies, amongst others, apply to the proposal:

“Existing Uses

- a) uses legally established prior to the date that the Greenbelt Plan came into force on December 16, 2004;
- 3.1.3.3 Non-agricultural uses may be permitted subject to the policies of sections 4.2 to 4.6. These uses are generally discouraged in prime agricultural areas and may only be permitted after the completion of an agricultural impact assessment.
- 4.5.1 All existing uses are permitted.
- 4.5.4 Expansions to existing buildings and structures, accessory structures and uses and/or conversions of legally existing uses

which bring the use more into conformity with this Plan are permitted subject to a demonstration of the following:

- a) Notwithstanding section 4.2.2.2, new municipal services are not required; and
- b) The use does not expand into key natural heritage features or key hydrologic features or their associated vegetation protection zones, unless there is no other alternative, in which case any expansion shall be limited in scope and kept within close geographical proximity to the existing structure.”

The uses contained on the subject lands are Existing Uses as defined in the Greenbelt Plan as they have legally existed since prior to the *Greenbelt Act* (December 16, 2004) and are permitted to continue on the subject lands and can be expanded subject to policy 4.5.4.

In accordance with this policy, the proposal does not require further municipal services and does not impact any key natural heritage or key hydrogeological features.

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

Rural Hamilton Official Plan (RHOP)

The subject properties are designated “Greenbelt Protected Countryside” on Schedule “A”- Provincial Plans of the RHOP. 167 Highway No. 5 West is designated “Open Space” on Schedule “D” – Rural Land Use Designations in the RHOP. Additionally, 167 Highway No. 5 West is designated Rural Site Specific Area “R-4” in Volume 3: Rural Site Specific Areas. 163 Highway No. 5 is designated “Agriculture” on Schedule “D” – Rural Land Use Designations.

163 Highway No. 5 – Garden Centre

Non-Conforming / Non-Complying Uses

- “F.1.12.2 An existing use, identified as Protected Countryside area on Schedule A – Provincial Plans, that does not comply to or conform with the land use designations and policies of this Plan and/or the Zoning By-law, that existed prior to December 16, 2004 or any amendments may continue provided that:

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- a) The non-complying use did not conflict with the Official Plan and Zoning By-law in effect at the time the use was established;
- b) The non-complying use has not been interrupted subsequent to the approval of this Plan; and,
- c) The non-complying use was lawfully existing on or before December 15, 2004.

F.1.12.3 Where appropriate, the City may amend the Zoning By-law to recognize the non-complying use as an existing use provided that all the following criteria shall be met:

- a) The Zoning By-law shall permit only the existing use and the associated performance standards;
- b) The use does not constitute a danger to surrounding uses and persons by virtue of their hazardous nature or by the traffic generated; and,
- c) The use does not pollute the air or water and is in compliance with appropriate provincial and municipal regulations.

F.1.12.4 The expansion or enlargement or change in non-complying uses shall be permitted provided they maintain the intent and purpose of this Plan, in particular Sections C.5.1, Sustainable Private Water and Wastewater Services and C.2.0, Natural Heritage System and any other requirements of the Planning Act.”

The use of the Golf Course and Garden Centre have been established on the subject lands since 1995, when an Official Plan Amendment and Zoning By-law Amendment were adopted by the former Town of Flamborough and became final and binding on September 16, 1991.

With the passing of the RHOP, the Garden Centre is considered Legal Non-Complying as it does not comply with the uses permitted under the “Agriculture” designation. However, since the use was established previously under the Flamborough Official Plan and Former Town of Flamborough Zoning By-law No. 90-145-Z, it is allowed to continue as the use did not conflict with the Official Plan and Zoning By-law in effect at the time.

The Garden Centre has never ceased operations and it was established prior to December 16, 2004.

As discussed above, the purpose of the Zoning By-law Amendment is to adjust the lot lines and incorporate the new zoning boundaries in order to accommodate for the lot line adjustment approved by the Committee of Adjustment on April 26, 2018 and clear Condition No. 3 of Consent Applications FL/B-18:29, FL/B-18:30, FL/B-18:31 and FL/B-18:32 respectively. Therefore, it is appropriate to amend the Zoning By-law to recognize the proposed boundaries for the Garden Centre as the Garden Centre has operated beyond the property boundaries since at least 1995.

An expansion to a Legal Non-Complying use is permitted if the expansion meets the intent of the RHOP, does not require new municipal services and does not further expand into any natural heritage features. No new services are required to facilitate the expansion and the expansion does not encroach into any natural features. The expansion is a technicality as the purpose of the applications is to recognize an existing situation and therefore meets the intent and purpose of the RHOP as the use does not take any lands away from agricultural production, being that a Golf Course is adjacent to the property. The use has operated continuously since its establishment and was in existence prior to approval of the RHOP.

The Zoning By-law Amendment will recognize the existing use as well as the performance standards associated with the Garden Centre. There is no new development proposed on the site and as such there are no negative impacts to the surrounding uses. Therefore the proposal complies with the RHOP.

167 Highway No. 5 West – Golf Course

Volume 3: Rural Site Specific Areas

“R-4 Lands known municipally as 167 Highway No. 5 West, former Town of Flamborough

- 1.0 Notwithstanding Section C.3.3, Open Space of this Plan, the lands designated Open Space, known municipally as 167 Highway No. 5 West, shall be used for public or private recreation, golf course and agriculture, together with limited commercial uses which are ancillary to, and support the permitted Open Space uses.”

A Golf Course is a permitted use at 167 Highway No. 5 West within the Rural Site Specific “R-4” Designation.

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The proposed Official Plan and Zoning By-law Amendment will recognize a 203m² parcel at the northernmost tip of the Garden Centre lands that is to be severed and merged on title with 167 Highway No. 5 West (Golf Course). The Official Plan Amendment is consistent with the PPS (2014) and conforms to the Greenbelt Plan (2017). Upon approval of the Official Plan Amendment, the proposed rezoning will comply with the RHOP.

With the exception of the boundary adjustment there are no changes to the existing Open Space (P4, 80) Zone that have been requested with this proposed Amendment and no new development is proposed on the 167 Highway No. 5 West (Golf Course) lands.

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

The subject lands municipally known as 167 Highway No. 5 West are currently zoned Open Space (P4, 80) Zone to which the Golf Course is a permitted use. The subject lands municipally known as 163 Highway No. 5 West are zoned Rural (A2, 104) Zone and contains the existing Garden Centre which is a permitted use.

The purpose of Zoning By-law Amendment Application ZAR-18-019 is for a change in Zoning from the Open Space (P4, 80) Zone to the Rural (A2, 104) Zone (Block 1 on Appendix "A" to Report PED18161) and from the Rural (A2, 104) Zone to the Open Space (P4, 80) Zone (Block 2 on Appendix "A" to Report PED18161) in order to recognize the encroachments of the Garden Centre and Golf Course and to implement the conditions of the severances.

The Zoning By-law Amendment will also include site specific performance standards for the Rural (A2, 104) Zone to recognize the existing locations of the outdoor display areas on the Garden Centre lands. No modifications are required to the Open Space (P4, 80) Zone for the Golf Course lands. The proposed amendment to the Zoning By-law is discussed in further detail in the Analysis and Rationale for Recommendation Section below.

RELEVANT CONSULTATION

The following internal Departments and external Agencies have no concerns or objections with respect to the proposed application:

- Infrastructure & Sourcewater Division, Public Works Department;
- Forestry & Horticulture Section, Public Works Department;

- Hamilton Conservation Authority; and,
- Ministry of Transportation.

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 for the Zoning By-law Amendment Application was circulated to 22 property owners within 120 m of the subject property on April 4, 2018, and on August 17, 2018 for the Official Plan Amendment Application, requesting public input. A Public Notice sign was also posted on the property on April 10, 2018. A Notice of Public Meeting was circulated on August 17, 2018. The public notice sign was updated on August 8, 2017 with the public meeting date.

No correspondence from the public was received on the application.

Public Consultation Strategy:

As per the City's Public Consultation 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 members of the public attended the Committee of Adjustment hearing.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

1. The proposed Rural Hamilton Official Plan Amendment and Zoning By-law Amendment applications have merit and can be supported for the following reasons:
 - (i) They are consistent with the Provincial Policy Statement and conform to the Greenbelt Plan (2017);
 - (ii) They comply with the policies of the RHOP, subject to the approval of the amendment; and,
 - (iii) The proposed amendment satisfies Condition No. 3 of Consent for Severance Applications FL/B-18:29, FL/B-18:30, FL/B-18:31 and FL/B-18:32 respectively which were approved by the Committee of Adjustment on April 26, 2018 (see Appendix "D" to Report PED18161).

2. The proposed Urban Hamilton Official Plan (UHOP) Amendment is required to refine the boundary of the Site Specific Area R-4 for the Golf Course located at 167 Highway No. 5 West in accordance with the approved lot line adjustment. Through the boundary adjustment, the UHOP amendment will remove the permissions for a Golf Course on the lands that are currently being utilized for a Garden Centre in accordance with the approved lot line adjustment.
3. The following additional modifications are necessary for the Rural (A2, 104) Zone to address setbacks and the location of existing accessory structures for the Garden Centre.

Side Yard Setback

The existing structures on the Garden Centre property are subject to the requirements of the Rural (A2) Zone being that all structures must be setback a minimum of 15m from the side yard property line.

In this case a modification is required to the side yard setback provision to recognize a side yard setback of 11m from the side property line (the property line located north of the existing Garden Centre building).

The site has operated with the existing side yard setback and there is a significant buffer between the side yard and the nearest structure on the property to the north. Therefore, staff are supportive of the modification.

Accessory Buildings

The intent of this provision is to recognize the location of all accessory buildings that exist on the site that are located within the required side yard. Due to the irregular shape of the lot, all lot lines other than the front yard abutting Highway No. 5 West and the rear yard at the northernmost lot line of the property are considered side lot lines. Staff recognize that the closest structures are located 0.4m away from the side lot lines and accordingly, the regulation applies to all existing accessory structures on the site. Though the setback is reduced, the modification can be supported for the following reasons:

- The use has existed for some time and the setback recognizes the existing location of accessory structures on the site;
- Due to the long standing nature of the use, an acceptable level of tolerance of the use has been established between the Garden Centre lands and the

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neighbouring single detached dwellings to the west of the property, therefore the setback is not negatively impacting the neighbouring properties; and,

- The setback only applies to accessory structures to the permitted use of a Garden Centre on the subject property.

Staff also note that there is no cap in the size of accessory structures permitted on the subject property, however, the definition of accessory already maintains that any structures must be secondary and subordinate to the primary use being the Garden Centre.

Therefore, staff support the modification.

Outdoor Storage

There are various concrete structures that store bulk landscaping material for pickup that are considered Outdoor Storage for the purposes of the By-law.

Through the City Initiated Rural Zoning exercise, a Site Specific Exception was established that did not include the provision for Outdoor Storage on the property. The intent of including this provision through this Amendment is to recognize the existing Outdoor Storage located on the property as it has been in existence since the establishment of the use while regulating any expansion of new Outdoor Storage in accordance with the current provisions for Outdoor Storage contained in Zoning By-law No. 05-200.

Since the use has long been established there are no perceived impacts to the surrounding properties by permitting existing Outdoor Storage as the provision recognizes the existing location of Outdoor Storage on the subject property. Any new Outdoor Storage areas shall be in accordance with the parent Rural (A2) Zone.

Therefore, staff are supportive of the modification.

4. Staff note that Site Plan Control is not necessary to implement the proposal as there are no plans to further develop the site beyond recognizing the existing uses and their associated performance standards at this time. Should further development be proposed, a Site Plan Control Application may be required.

ALTERNATIVES FOR CONSIDERATION

Should the application be denied, the conditional approval of Consent Applications FL/B-18:29, FL/B-18:30, FL/B-18:31 and FL/B-18:32 will lapse, and the applicant will not be able to complete the lot line adjustment. The use of the subject properties will continue to be regulated by the current boundaries of the existing Rural (A2, 104) Zone and Open Space (P4, 80) Zone in the City of Hamilton Zoning By-law No. 05-200. The existing encroachments will have to be removed in order to conform to the Zoning By-law.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

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Economic Prosperity and Growth

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

Our People and Performance

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APPENDICES AND SCHEDULES ATTACHED

Appendix “A” - Location Map

Appendix “B” - Draft Rural Hamilton Official Plan Amendment

Appendix “C” - Draft Amendment to Zoning By-law No. 05-200

Appendix “D” - Committee of Adjustment Decisions for FL/B-18:29, FL/B-18:30, FL/B-18:31 and FL/B-18:32

Appendix “E” - Proposed Land Severance Sketch

Appendix “F” - Site Plan

RF:jp