



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
Planning Division

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	November 3, 2020
<b>SUBJECT/REPORT NO:</b>	Applications for a Rural Hamilton Official Plan Amendment and a Zoning By-law Amendment for Lands located at 2069 Binbrook Road, Glanbrook (PED20146) (Ward 11)
<b>WARD(S) AFFECTED:</b>	Ward 11
<b>PREPARED BY:</b>	Alaina Baldassarra (905) 546-2424 Ext. 7421
<b>SUBMITTED BY:</b>	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION(S)**

- (a) That **Rural Hamilton Official Plan Amendment application RHOPA-20-014, by Paletta Livestock Ltd., (Owner)**, to add a Site Specific Policy Area to recognize two existing single detached dwellings on a severed lot in order to meet the conditions of the December 20, 2019 Local Planning Appeal Tribunal Decision (Case No. PL180696) (GL/B-17:110) for lands located at 2069 Binbrook Road, as shown on Appendix “A” to Report PED20146, be **APPROVED**, on the following basis:
- (i) That the draft Official Plan Amendment, attached as Appendix “B” to Report PED20146, be enacted by City Council; and,
  - (ii) That the proposed Official Plan Amendment will implement the Local Planning Appeal Tribunal Decision in Case No. PL180696 to permit two existing single detached dwellings on a severed residential lot.
- (b) That **Zoning By-law Amendment application ZAA-20-022, by Paletta Livestock Ltd. (Owner)**, for a change in zoning from Agriculture (A1) Zone to Agriculture (A1,118) Zone to prohibit the construction of a single detached

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dwelling and a residential care facility and to recognize the reduced lot area for the retained agricultural parcel, for lands located at 2069 Binbrook Road as shown on Appendix “A” to Report PED20146, be **APPROVED**, on the following basis:

- (i) That the draft By-law, attached as Appendix “C” to Report PED20146, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council;
- (ii) That the amending By-law be added to Schedule “C” – Special Exceptions of Zoning By-law No. 05-200; and,
- (iii) That the proposed change in zoning will comply with the Rural Hamilton Official Plan upon approval of Rural Hamilton Official Plan Amendment NO. XX.

## **EXECUTIVE SUMMARY**

The purpose of the Rural Hamilton Official Plan Amendment and Zoning By-law Amendment applications are to:

- Recognize two existing single detached dwellings on the severed lot;
- Prohibit the construction of a single detached dwelling or a residential care facility on the retained agricultural portion of the subject lands; and,
- Recognize the reduced lot area of the retained agricultural portion of the subject lands.

The property was subject to a Consent for Severance application for a Surplus Farm Dwelling (GL/B-17:110). The Consent for Severance application was not supported by staff and was denied by the Committee of Adjustment on July 5, 2018. It was subsequently appealed to the Local Planning Appeal Tribunal (LPAT) on August 11, 2018. The December 20, 2019 Decision and Order gave consent to sever a 2 ha parcel from the existing 36 ha farm, subject to conditions.

The proposed Official Plan and Zoning By-law amendments will implement the Decision and Order of the Local Planning Appeal Tribunal, dated December 20, 2019 (Case No. PL180696).

## **Alternatives for Consideration – See Page 10**

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**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 to consider an application for an amendment to an Official Plan and Zoning By-law.

**HISTORICAL BACKGROUND**

**Report Fact Sheet:**

<b>Application Details</b>	
Owner:	Pat Paletta Ltd.
Applicant/Agent	Dave Pitblado
File Number:	RHOPA-20-014 and ZAC-20-022
Type of Application:	Rural Hamilton Official Plan Amendment and Zoning By-law Amendment
Proposal:	<ul style="list-style-type: none"><li>• Official Plan Amendment to recognize two single detached dwellings on the surplus farm dwelling portion of the subject lands;</li><li>• Zoning By-law Amendment to prohibit the construction of a single detached dwelling or a residential care facility on the retained agricultural portion of the subject lands; and,</li><li>• Zoning By-law Amendment to recognize a reduced lot area of the retained agricultural portion of the subject lands.</li></ul>
<b>Property Details</b>	
Lot Area:	±36.4 ha (Existing Lot Area)  Proposed Severed Residential Lot: 2.0 ha (108 m x 186 m) Proposed Retained Agricultural Lot: 34.5 ha (174 m x 804 m) A road widening is required to be provided as a condition of the consent for both frontages along Binbrook Road and Hendershot Road for the severed and retained lots.

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Servicing:	Private water (well) and waste water (septic) services.
Existing Use:	Agricultural uses and two single detached dwellings (one of the single detached dwellings was constructed as a farm labour residence).
<b>Documents</b>	
Provincial Policy Statement (PPS):	LPAT determined the proposal was consistent with the PPS (refer to LPAT's December 20, 2019 Decision and Order attached as Appendix "E" to Report PED20146).
Greenbelt Plan:	LPAT determined the proposal conformed to the Greenbelt Plan (refer to LPAT's December 20, 2019 Decision and Order attached as Appendix "E" to Report PED20146).
Official Plan Existing:	Designated as "Agriculture" on Schedule "D" – Rural Hamilton Official Plan.
Official Plan proposed:	Volume 3 – Special Policy Areas, Area Specific Policies, and Site Specific Policies: Add a Site Specific Policy Area to recognize two existing single detached dwellings on the severed portion of the subject lands in accordance with LPAT's December 20, 2019 Decision and Order attached as Appendix "E" to Report PED20146.
Zoning Existing:	Agriculture (A1) Zone
Zoning Proposed:	Agriculture (A1, 118) Zone
Modifications Proposed:	Prohibit a single detached dwelling and Residential Care Facility and recognize the undersized size of the retained agricultural lands in accordance with LPAT's December 20, 2019 Decision and Order attached as Appendix "E" to Report PED20146.
<b>Processing Details</b>	
Received:	April 8, 2020
Deemed Incomplete:	May 4, 2020

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Deemed Complete:	June 5, 2020
Notice of Complete Application:	Sent to 16 property owners within 120 m of the subject property on June 8, 2020.
Public Notice Sign:	Posted June 18, 2020 and updated with Public Meeting date on October 7, 2020.
Notice of Public Meeting:	Sent to 16 property owners within 120 m of the subject property on October 16, 2020.
Public Consultation:	The application went through an initial public circulation process
Public Comments:	There were no public comments received for the proposal.
Processing Time:	209 days

**Consent for Severance Application GL/B-17:110**

On July 5, 2018, Consent for Severance application GL/B-17:110 was heard by the Committee of Adjustment. The application was to permit the conveyance of a 2 ha parcel of land containing two single detached dwellings, and to retain a 36 ha agricultural parcel as part of a Surplus Farm Dwelling severance.

Staff did not support the application because the proposed severance did not comply with RHOP policy C.3.1.4 which only permits one residential dwelling per lot. The severance would create a new residential lot with two residential dwellings on the property. Staff note that the second dwelling, constructed in 1989 was originally used as a farm labour residence, but ceased being used in that manner in the early 2000s and was then used as a second residence by a family member of the owner of the property. As per RHOP policy 1.14.2.1 (a) (iii), a severance of a farm labour residence or an existing dwelling that was permitted in a previous official plan and zoning by-law as a farm labour residence, farm help house, or help house is prohibited.

The Committee of Adjustment denied the application on July 5, 2018 (see Appendix “D” to Report PED20146), and the Committee of Adjustment decision was appealed to the LPAT on August 1, 2018.

**December 20, 2019 Local Planning Appeal Tribunal (LPAT) Decision Order**

The LPAT’s December 20, 2019 Decision and Order approved the Consent application to sever a 2 ha residential parcel containing two single detached dwellings from the

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existing 36 ha farm subject to fulfilment of the conditions identified in Attachment 1 of the December 20, 2019 Decision and Order (see Appendix “E” to Report PED20146) which identifies the requirement to obtain an Official Plan Amendment and Zoning By-law Amendment, amongst other conditions.

In its decision, the LPAT determined that the Consent was consistent with the PPS and conformed to the Greenbelt Plan policies. However, the LPAT found that creating a new lot with the two existing dwellings on it contravenes RHOP policy C.3.1.4, regardless of whether the structures are legal non-complying structures, or their uses are legal non-conforming on the subject property. The Tribunal found that the subject property, without proposing any development, does not contravene this policy, but the creation of a new lot with two dwellings on it would. Regarding compliance with the Zoning By-law, the Tribunal found that there is no dwelling proposed to be erected and therefore does not contravene section 4.5(a) of Zoning By-law No. 05-200.

The LPAT found that the proposed consent did not conform with the RHOP policies F.1.14.2.1(a)(iii) and C.3.1.4 but found that they could be addressed through the inclusion of conditions requiring that the Applicant apply for and obtain an official plan amendment exempting the proposed severed lot from the restrictions in those specific RHOP policies. The wording of the LPAT condition is:

“The applicant shall receive final and binding approval of Official Plan Amendments in order to 1) permit two single detached dwellings on the severed parcel; and 2) to allow the severance of an existing dwelling that was permitted in a previous official plan and zoning by-law as a farm help house”.

The LPAT found that the conditions set out in Attachment 1 of the December 20, 2019 Decision and Order (see Appendix “E” attached to Report PED20146) are reasonable and capable of fulfilment. It notes that the second single detached dwelling already exists on the property and has been used as a single detached dwelling for many years.

The Provisional Consent and the Conditions will come in full force and effect when the Tribunal issues its Final Order after the Official Plan Amendment is approved. The conditions must be satisfied by the owner within one year of the Tribunal’s Final Order. According to the Provincial Declaration of Emergency (O, Reg. 50/20) dated March 17, 2020, and the Order under Section 7.1 (2) of the Emergency Management and Protection Act, the Tribunal’s Order regarding the July 1, 2020 deadline is suspended for the period of the emergency.

**EXISTING LAND USE AND ZONING**

	<b>Existing Land Use</b>	<b>Existing Zoning</b>
<b><u>Subject Lands:</u></b>	Two Single Detached Dwellings and Agriculture	Agriculture (A1) Zone
<b><u>Surrounding Lands:</u></b>		
North	Single Detached Dwellings and Agriculture	Agriculture (A1) Zone
East	Single Detached Dwelling and Agriculture	Agriculture (A1, 118) Zone
South	Single Detached Dwelling and Agriculture	Agriculture (A1) Zone
West	Single Detached Dwelling and Agriculture	Agriculture (A1) Zone

**POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

Rural Hamilton Official Plan

In order to implement the LPAT Decision and Order of December 20, 2019 (attached as Appendix “E” to Report PED20146), the applicant has applied for an Official Plan Amendment in order to recognize two existing residential dwellings on the severed residential lot. As per the LPAT Decision of December 20, 2019, the LPAT was of the opinion that the consent meets the current policies because the second single detached dwelling, originally constructed as a farm labour residence, had been used as a single detached dwelling for many years in the past and there are two single detached dwellings that presently exist on the property. The LPAT found that the proposed consent does not result in the erection of further residential dwellings in the area, it will protect the existing housing stock, and it will not increase housing density in the agricultural area. Therefore, the LPAT found that the requirement for an Official Plan Amendment is both reasonable and capable of fulfilment.

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**Zoning By-law No. 05-200**

The subject lands are zoned Agriculture (A1) Zone in Zoning By-law No. 05-200. The Agriculture Zone permits Agriculture, a Single Detached Dwelling, a Residential Care Facility, Secondary Uses to Agriculture and Veterinary Service – Farm Animals.

In order to facilitate the Consent application approved by the LPAT Decision and Order of December 20, 2019, attached as Appendix “E” to Report PED20146, the applicant has applied for a zoning by-law amendment in order to recognize the reduced lot size and prohibit the construction of a single detached dwelling and residential care facility on the retained lands (see Appendix “C” of Report PED20146).

**RELEVANT CONSULTATION**

<b>Departments and Agencies:</b>		
<ul style="list-style-type: none"> <li>• Canada Post;</li> <li>• Niagara Peninsula Conservation Authority; and,</li> <li>• Forestry &amp; Horticulture, Public Works Department.</li> </ul>		<ul style="list-style-type: none"> <li>• No Comment</li> </ul>
	<b>Comment</b>	<b>Staff Response</b>
Recycling & Waste Disposal, Environmental Services Division	Staff note that this proposal assumes that these will be two single detached dwellings fronting onto a municipal roadway, as such waste collection should not be an issue.	Noted
Development Approvals	A road widening dedication is required as per the Notice of Decision and the LPAT decision.	The applicant would be required to work with the appropriate Department in order to provide proof that the condition has been satisfied and provide clearance to the Committee of Adjustment.
<b>Public Consultation:</b>		
No Comments Received		



### Public Consultation

In accordance with the provisions of the *Planning Act* and the Council approved Public Participation Policy, Notice of Complete Application and Preliminary Circulation was sent to 16 property owners within 120 metres of the subject property on June 8, 2020.

A Public Notice sign was posted on the property on June 18, 2020 and updated on October 7, 2020 with the Public Meeting date. Finally, Notice of the Public Meeting was given on October 16, 2020 in accordance with the requirements of the *Planning Act*.

To date, no submissions were received for the subject applications.

### Public Consultation Strategy

The applicant's Public Consultation Strategy identified that a circulation to the surrounding property owners was previously sent through the Committee of Adjustment Consent application. At that time, there were no comments received regarding the proposed surplus farm dwelling Consent application.

### **ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)**

1. The proposed Rural Hamilton Official Plan Amendment and Zoning By-law Amendment have merit and can be supported for the following reasons:
  - (i) The applications implement the Local Planning Appeal Tribunal Decision in Case No. PL180696 to approve a severance of two surplus farm dwellings, as a result of a farm consolidation and, to permit the continued use of two existing single detached dwellings on a residential lot.

2. Official Plan Amendment

The subject lands are designated Agriculture in the Rural Hamilton Official Plan. The purpose of the Official Plan Amendment is to implement the approved decision of the Local Planning Appeal Tribunal to permit two existing single detached dwellings on one lot (one of the single detached dwellings was constructed as a farm labour residence), as a result of a surplus farm dwelling severance.

The Tribunal decision noted that the amendment was required because the Consent application does not comply with RHOP policies F.1.14.2.1(a)(iii) and C.3.1.4. Therefore, a condition was included as part of the Tribunal's decision for the applicant to obtain an Official Plan Amendment (identified in the Decision and

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Order attached as Appendix “E” to Report PED20146). As such, the purpose of the Official Plan Amendment is to implement the Tribunal’s decision.

3. Zoning By-law Amendment

The lands are currently zoned Agriculture (A1) Zone in Zoning By-law No. 05-200. The purpose of the application is to implement the condition of the Tribunal’s decision which requires a rezoning to restrict a new residential dwelling or residential care facility and to recognize the reduced lot area on the retained agricultural lands (identified in the Decision and Order attached as Appendix “E” to Report PED20146).

**ALTERNATIVES FOR CONSIDERATION**

Should the proposed Rural Hamilton Official Plan and Zoning By-law Amendment applications be denied, the subject lands will continue to be utilized in accordance with the existing Agriculture (A1) Zone within the Zoning By-law No. 05-200. As the applicant would not meet the conditions set out in the Local Planning Appeal Tribunal’s decision relating to GL/B-17:110, the lands could not be severed.

**ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

**Community Engagement & Participation**

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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

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Appendix "D" - Committee of Adjustment Decision for GL/B-17:110

Appendix "E" - LPAT Decision

Appendix "F" – Proposed Land Severance Sketch