



A. J. Clarke and Associates Ltd.

SURVEYORS • PLANNERS • ENGINEERS

November 12, 2020

The City of Hamilton
Clerks Department
71 Main Street West, 1st Floor
Hamilton, Ontario
L8P 4Y5

Sent via email to: clerk@hamilton.ca

Attn: Chair and Members of Planning Committee

**Re: 2121 & 2187 Regional Road 56, Glanbrook
Rural Hamilton Official Plan Amendment (“Proposed OPA”)
City File: RHOPA-19-015
Letter of Objection**

Dear Chair and Members of Planning Committee,

On behalf of our Client, John Bruce Robinson Construction Limited, we are submitting this letter to formally object to the Proposed OPA at 2121 & 2187 Regional Road 56, Glanbrook. The lands located at 2187 Regional Road 56 in particular (“Subject Lands”), are currently used for commercial purposes, containing two one-storey buildings used for bus depot and motor vehicle storage uses (“Existing Uses”). The Subject Lands have also been used as a seasonal garden centre. The Subject Lands are not currently used, nor have they ever been used, as a Motor Vehicle Service Station, and/or Motor Vehicle Gas Bar, Restaurant, and/or a Car Wash as proposed through City’s Site Plan File: SPA-19-080 (“Future Uses”). The buildings are located in the front portion of the Subject Lands, which is generally paved with gravel. The rear portion is vacant, consisting of a densely vegetated area.

The Greenbelt Plan (2005 and 2017)

The Subject Lands are outside of the urban boundary, approximately 300 metres from the northerly limit of the Binbrook Village Secondary Plan, which coincides with the north limit of the urban area boundary of Binbrook and are currently serviced by private water and wastewater services. The Subject Lands are designated as Protected Countryside and fall within prime agricultural areas of the Protected Countryside in the Greenbelt Plan (2005) and the Greenbelt Plan (2017).

The purpose of the Proposed OPA is to permit Existing Uses and Future Uses to connect to lake-based municipal water and wastewater services. As the following policy review indicates, such connections are only permitted outside of the urban area boundary under very rare circumstances. These circumstances do not exist in this case.

Provincial planning policy, specifically the Greenbelt Plan (2005 and 2017), generally prohibits the extension of municipal or private communal sewage or water services outside of a settlement boundary except in the following circumstances:



- in the case of health issues;
- to service existing uses; or
- to service the expansion of existing uses adjacent to the settlement.

None of these circumstances exist in this case. There is no evidence of any health issues in relation to existing private water supply for the subject lands. Notwithstanding the above, where municipal water services exist outside of settlements areas, existing uses within the service area boundary as defined by an environmental assessment may be connected to such a service. In this case, municipal water services do not exist outside the settlement area, and as mentioned previously, the Future Uses do not exist as such, they are not existing uses. The Subject Lands have never been used for Motor Vehicle Service Station, and/or Motor Vehicle Gas Bar, Restaurant, and/or a Car Wash.

In order to conform and not conflict with the Greenbelt Plan, the Existing Uses and Future Uses should continue to be serviced by private systems.

The Rural Hamilton Official Plan

The Rural Hamilton Official Plan implements the policy regime established by the Greenbelt Plan.

The Subject Lands are designated both Greenbelt Protected Countryside and Key Natural Heritage Feature Significant Woodlands in Schedule B-2 of the Rural Hamilton Official Plan (RHOP). The Subject Lands are also designated as Agriculture in Schedule D of the RHOP. The City's local policy framework within RHOP sets out substantial technical criteria and requirements for development on private services; however, the Proposed OPA by-passes that policy framework in order to connect to lake-based municipal services that need to be extended well outside the urban area boundary. Pol. C.5.1 of RHOP – Private Water and Wastewater Services (OPA 5) – confirms that the objective of this Plan is to ensure all rural development establishes, and maintains in perpetuity, sustainable private services in accordance with the policies set out in section 5.1.1. The Proposed OPA does not maintain in perpetuity, sustainable private services, and such, does not conform with this objective of the RHOP.

The RHOP also provides policy direction for existing uses within the plan and is consistent with the relevant provincial policy direction of the Greenbelt Plan.

Pol. 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 (emphasis added) provided that:

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



The Future Uses within the corresponding site plan application (City File: SPA-19-080) are new uses proposed and therefore cannot be evaluated against the above-noted policies to determine that their use(s) may continue.

Pol. 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.

Pol. 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. Pol. F.1.12.5 Where an existing use does not comply with the criteria in Section F.1.12.2 and is incompatible with surrounding land uses or other policies in this Plan, it shall not be zoned and shall be deemed to be a non-conforming use for the purposes of the Zoning By-law.

Existing: when used in reference to a use, lot, building or structure, means any use, lot, building or structure legally established or created prior to the day of final approval and coming into effect of the relevant sections of this Official Plan or at some earlier date as may be specified in the policies such as December 16, 2004 for the Greenbelt Plan policies.

Again, the Future Uses proposed within the Site Plan File: SPA-19-080 for the Subject Lands are not existing uses and are not permitted uses within the Zoning By-law.

City of Hamilton's Comprehensive Zoning By-law 05-200

In 2015, the City's Comprehensive Zoning By-law 05-200, as amended by site-specific Zoning By-law No. 15-173 ("Parent ZBL") regulated the Subject Lands. The Subject Lands were zoned as "E1-151" – Existing Rural Commercial Zone and "P6" – Conservation/Hazard Lands Rural Zone. The Parent ZBL permitted the following uses:

- a. agriculture
- b. agricultural processing establishments – stand alone
- c. agricultural storage establishments
- d. farm product supply dealers
- e. kennels
- f. motor vehicle storage, sales, and repair operation
- g. office for a travel agency.
- h. uses existing at the date of the passing of the Parent ZBL



Before the Parent ZBL came into force and effect, the Subject Lands were regulated by the former Township of Glanbrook Zoning By-law No. 464 ("Former ZBL"). Under the Former ZBL, the Subject Lands were zoned as site-specific General Commercial "C3-031". The permitted uses were:

- a. The permitted uses on these lands shall be restricted to a motor vehicle storage, sales and repair operation, and an office for a travel agency, and accessory uses, buildings, and structures.

A Motor Vehicle Service Station is a defined use in the Former ZBL and the Parent ZBL. It was not a permitted use on the Subject Lands in 2015. Furthermore, the additional uses proposed through Site Plan File: SPA-19-080, specifically a Motor Vehicle Gas Bar, Restaurant, and/or a Car Wash are not permitted within the RHOP or the Zoning By-law.

Conclusion

The Proposed OPA to permit Existing Uses and Future Uses that are currently not permitted within the RHOP and/or Zoning By-law and allow them to connect to lake-based municipal water and wastewater services by extending those municipal services well outside the urban area boundary should not be approved. The Proposed OPA is the antithesis of the policy regime established by the Greenbelt Plan as implemented in the Rural Hamilton Official Plan. That policy regime aims to protect rural and agricultural lands through appropriate servicing practices and ensuring appropriate land uses are implemented to meet the objectives and goals of the RHOP. The Proposed OPA does not conform to the applicable policy regime, does not represent good planning, and should be denied.

I trust this is satisfactory for your purposes and thank you for the Planning Committee's consideration in this matter. Should you have any questions or require additional information, please do not hesitate to contact the undersigned.

Yours very truly,

A handwritten signature in blue ink, appearing to be 'S. Fraser'.

Stephen Fraser, MCIP, RPP
A. J. Clarke and Associates Ltd.

Encl.

Copy via email only: John Bruce Robinson Construction Limited, Attn: Coleman Robinson
Turkstra Mazza Associates, Lawyers, Attn: Nancy Smith