



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	May 18, 2021
SUBJECT/REPORT NO:	Request for Direction to Proceed with Appeal of Committee of Adjustment Consent Application FL/B-20:86 for the Lands Located at 173 Highway No. 52, Flamborough (PED21059) (Ward 12)
WARD(S) AFFECTED:	Ward 12
PREPARED BY:	June Christy (905) 546-2424 Ext. 5863
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That Council gives approval to the following actions, as detailed in Report PED21059, respecting Committee of Adjustment Consent application FL/B-20:86 submitted by Don Robertson on behalf of Owners Jacob and Cassidy DeJong for the lands located at 173 Highway 52, Flamborough as shown on Appendix "A" to Report PED21059 approved by the Committee of Adjustment but recommended for Denial by the Planning and Economic Development Department:

- (i) That Council of the City of Hamilton proceed with the appeal to the LPAT against the decision of the Committee of Adjustment to approve application FL/B-20:86;
- (ii) That Council directs appropriate Legal Services and Planning Staff to attend the future LPAT Hearing in opposition to the decision of the Committee of Adjustment to approve application FL/B-20:86.

EXECUTIVE SUMMARY

On January 21, 2021, the Committee of Adjustment heard Consent application FL/B-20:86 to permit the conveyance of a 19.2 ha parcel of land at 173 Highway No. 52 and to retain a 1.14 ha parcel containing an existing single detached dwelling. The 19.2 ha parcel would be merged with an abutting vacant parcel of land at 1372 Concession 2 West for agricultural purposes (see Appendix “C” to Report PED21059). Although the conveyed parcel would be for agricultural purposes, the retained 1.14 ha parcel would be too small for agricultural purposes and would become a residential lot.

Staff comments to the Committee of Adjustment noted that there were conflicts with the Greenbelt Plan and the Rural Hamilton Official Plan with the application for a severance of land that has the effect of creating a lot for residential purposes. The proposed consent does not meet RHOP policy F.1.14.2.5 c). where if a severance was to occur, the lands must have a resulting lot size of greater than 40.4 ha. The intent of this policy is to ensure that the severed lands are viable for agricultural purposes. Only severances for surplus farm dwellings are permitted and the subject application is not for a surplus farm dwelling. Furthermore, the proposed Consent does not conform to the Agriculture (A1) Zone as a minimum lot size required is 40.4 ha for an agricultural use.

The Committee of Adjustment approved the application for the reasons set out in the decision of the Committee of Adjustment (see Appendix “E” to Report PED21059).

Under the *Planning Act*, appeals must be filed within 20 days of the decision. As such, as per the standing instructions to staff, Planning and Economic Development staff submitted an appeal letter and the required fee to the Secretary-Treasurer of the Committee of Adjustment to initiate the appeal process, subject to Council's approval/ratification. The purpose of this Report is to seek Council direction on the appeal.

Alternatives for Consideration – See Page 11

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Planning and Economic Development Department staff has submitted the required fee of \$400.00 to the Minister of Finance to begin the appeal process. Other than this one-time fee, the costs for the Hearing are covered by the respective Departmental Work Programs/Budgets. The Hearing would likely take one day.

Staffing: One representative each from Planning and Legal Services would be required for preparation and attendance at an LPAT Hearing.

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Legal: No legal implications are expected.

BACKGROUND

Consent Application FL/B-20:86

The Consent to Sever application FL/B-20:86 was heard by the Committee of Adjustment on January 21, 2021. The proposal was to sever a 19.2 ha agricultural parcel at 173 Highway No. 52 and retain a 1.14 ha parcel containing an existing dwelling. An existing barn on the retained portion would be demolished. The larger 19.2 ha parcel would be conveyed to the adjacent vacant 17.9 ha lot at 1372 Concession 2 West. The agent for the applicant advised that the present owners are not farmers and that the adjacent owner at 1372 Concession 2 West desired a larger agricultural parcel for their farming operation.

Staff comments noted that the proposed severance did not meet the severance policies of the RHOP (see staff comments in Appendix “C” to Report PED21059). Severances that create new lots for residential uses in the Agricultural designation are prohibited except where a dwelling unit may be severed as a result of a farm consolidation. In this case, farm consolidation with another agricultural farm has not occurred. Therefore there is no surplus farm dwelling. In order for the severance to proceed, a successful Official Plan amendment and Zoning By-law amendment would be required to recognize the deficient lot sizes. The minimum lot size in the Agriculture (A1) Zone is 40.4 ha. Staff noted in their comments to the Committee of Adjustment that the proposed severance conflicts with the Greenbelt Plan and applicable RHOP policies.

As the minutes of the Committee of Adjustment meeting indicate (see Appendix “D” to Report PED21059), the Agent for the applicant advised that the severance would enhance the agricultural viability of the adjacent farm by creating a larger agricultural parcel. No land would be taken out of agricultural production and no new lots would be created once the two properties were merged. The Committee approved the application with conditions including a successful Official Plan Amendment to permit the proposed severance and a Zoning By-law Amendment to recognize the smaller lot sizes (see Appendix “E” to Report PED21059).

Appeal to Local Planning Administrative Tribunal (LPAT)

On February 1, 2021, Planning Division staff filed an appeal to the LPAT on behalf of the Planning and Economic Development Department with the Committee of Adjustment decision to approve the application. The reasons for the appeal are as follows:

- a) The proposed Consent conflicts with the Severance policies of the Greenbelt Plan and the RHOP; and,
- b) The lands to be retained do not comply with the applicable provisions of the Zoning By-law.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Planning Act

The application has been reviewed with respect to the provision of the *Planning Act*.

Powers of Committee

“44(1) If a municipality has passed a by-law under section 34 or a predecessor of such as the council considers advisable. R.S.O. 1990, c. P.13, s, 44(1).

45(1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such section, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained. R.S.O. 1990, c. P.13, s, 45(1); 2006, x, 23, s, 18 (1); 2009, c. 33, Sched. 21, s. 10 (11).

45(3) A council that has constituted a committee of adjustment may by by-law empower the committee of adjustment to grant minor variances from the provisions of any by-law of the municipality, that implements an official plan, or from such by-laws of the municipality as are specified and that implement an official plan, and when a committee of adjustment is so empowered subsection (1) applies with necessary modification. R.S.O. 1990, c. P.13, s. 45 (3)).

53(1) An owner of land or the owner's agent duly authorized in writing may apply for a consent as defined in subsection 50 (1) and the council or the Minister, as the case may be, may, subject to this section, give a consent if satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. 1994, c. 23 s. 32.

54(5) The council of a single-tier municipality authorized to give a consent under section 53 may by by-law delegate the authority of the council under section 53

or any part of that authority to a committee of council, to an appointed officer identified in the by-law by name or position occupied, to a municipal planning authority or to the committee of adjustment. 2002, c. 17, Sched. B, s. 21 (4).

54(6) Where, under subsection (2) or (5), a committee of adjustment has had delegated to it the authority to give a consent, section 53 applies with necessary modifications and subsections 45 (4) to (20) do not apply in the exercise of that authority. 1994, c. 23, s. 33 (9).”

Staff did not support the Consent application because the proposal conflicts with the severance policies in the RHOP and did not meet the minimum lot size requirements in the Agriculture (A1) Zone.

Provincial Policy Statement (2019)

The Provincial Planning Policy Framework is established through the *Planning Act* (Section 3) and the Provincial Policy Statement (PPS). The *Planning Act* requires that all municipal land use decisions affecting planning matters be consistent with the PPS. The following policies of the PPS, amongst others, apply to the proposal.

Residential Development

“1.1.4.2 In *rural areas*, *rural settlement areas* shall be the focus of growth and development and their vitality and regeneration shall be promoted.

1.1.5.2 On *rural lands* located in municipalities, permitted uses are:

- a) the management or use of resources;
- b) resource-based recreational uses (including recreation dwellings);
- c) residential development, including the lot creation, that is locally appropriate;
- d) *agricultural uses, agriculture-related uses, on-farm diversified uses and normal farm practices*, in accordance with provincial standards;
- e) home occupations and home industries;
- f) cemeteries; and,
- g) other rural land uses.

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.

- 2.3.4.1 Lot Creation in *prime agricultural areas* is discouraged and may only be permitted for:
- a) *agricultural uses*, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations;
 - b) *agriculture-related uses*, provided that any new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services;
 - c) *a residence surplus to a farming operation* as a result of farm consolidation, provided that;
 - a. the new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services; and,
 - b. the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance. The approach used to ensure that no new residential dwellings are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches which achieve the same objective; and,
 - d) *infrastructure*, where the facility or corridor cannot be accommodated through the use of easement or rights-of-way.
- 2.3.4.3 The creation of new residential lots *in prime agricultural areas* shall not be permitted, except in accordance with policy 2.3.4.1(c)."

The proposed severance is not consistent with Policy 1.1.4.2 which focuses growth within Rural Settlement Areas, as the proposal is not located in a Rural Settlement Area. The proposed severance will create a residential lot of 1.14 ha which is too small to be an agriculturally viable parcel of land and the effect of the Consent application is to create a non-form, rural residential lot. As per Policy 2.3.4.1, lot creation may only be permitted for agricultural uses, agriculture-related uses or a residence surplus to a farming operation. Finally, as per Policy 2.3.4.3, the creation of new residential lots in prime agricultural areas shall not be permitted and therefore, the proposed Consent is not consistent with the Provincial Policy Statement.

Greenbelt Plan (2017)

The lands are designated “Protected Countryside” in the Greenbelt Plan. The following policies of the Greenbelt Plan, amongst others, apply to the proposal.

“3.1.4 Rural Lands Policies

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 Existing Uses

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.

4.6 Lot Creation

1. Lot creation is discouraged and may only be permitted for:

- a) Outside *prime* agricultural areas, including *specialty crop areas*, the range of uses permitted by the policies of this Plan;
- 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.”

The Greenbelt Plan policies provide direction for the severance of a residence surplus to a farming operation as a result of a farm consolidation. The proposed Consent does not meet these policies and does not conform to the Greenbelt Plan.

Rural Hamilton Official Plan

The subject lands are designated as “Agriculture” in Schedule D - Rural Land Use Designations. The following policies, amongst others, apply to the proposal.

Residential Development – Severance Policies

“F.1.14.2.1 The following policies apply to all severances and lot additions, including minor lot line adjustments and boundary adjustments in the Agricultural, Rural, Speciality Crop, and Open Space designations, and designated Rural Settlement Areas, as shown on Schedule D – Rural Land Use Designations:

- a) Severances that create a new lot for the following purposes shall be prohibited:
 - i) Residential uses except in accordance with:
 - 1) Policies F.1.14.2.1 b) iii) and F.1.14.2.8, where a dwelling may be severed as a result of a *farm consolidation*.”
 - 2) Policies F.1.14.2.1 b) iv) and F.1.14.2.4, where a dwelling within a designated Rural Settlement Area may be severed.”

Based on the above, the proposed severance does not comply because the creation of a residential non-surplus farm dwelling lot is prohibited, and the proposed severance is not located in a Rural Settlement Area.

“F.1.14.2.5 Lot additions, except within designated Rural Settlement Areas, may be considered for permitted uses provided the following conditions are met:

- a) No new lots shall be created;

- b) For lands within the Agriculture designation where the *lot addition* is for *agricultural uses*, the minimum lot size of all resulting lots shall be 40.4 hectares (100 acres).
- h) The lands to be severed and conveyed are added to and merged on title with an abutting property or properties.”

The proposed Consent application does not comply with Policy F.1.14.2.5 b). The lands are designated Agriculture, which indicates that the lands are comprised of prime agricultural land. The RHOP requires that if a severance was to occur, the agricultural lands must have a resulting lot size of greater than 40.4 ha. The intent of this policy is to ensure that the severed agricultural property can continue to be agriculturally viable in the future. Staff note that the subject application would create a lot that is only 1.14 ha resulting in a lot size that is too small and not viable for agriculture. It is noted however that the portion to be conveyed is 19.2 ha and would be added to the property at 1372 Concession 2 West which would create a parcel that is a total of 37.17 ha for agricultural purposes. However, the minimum 40.4 ha lot size would not be met, as per Policy F.1.14.2.5 b).

“F.1.14.2.8 An existing farm dwelling that is a residence surplus to a farming operation as a result of a farm consolidation may be severed provided all of the following conditions are met:

- I) The farm consolidation shall have been complicated prior to the time of application.
- II) The farm dwelling shall be determined to be surplus to the farm operation for no reason other than the farm dwelling is surplus to the needs of the farm consolidation. Farm dwellings that have been determined to be surplus to a farm operation prior to December 16, 2004 and prior to the acquisition of the additional farm parcel(s), or as a result of changing agricultural operations, are deemed not to be surplus farm dwellings for the purposes of Section F.1.14.2.8.”

The proposed Consent application does not comply with the RHOP policies for surplus farm dwelling severances because the subject application did not involve a farm consolidation and there is no surplus farm dwelling.

Therefore, the proposal does not comply with the RHOP.

Hamilton Zoning By-law No. 05-200

The subject lands are zoned A1 (Agriculture) Zone. The minimum lot area for an agricultural parcel is 40.4 ha. The retained lands will be 1.14 ha while the lands to be conveyed will be 19.2 ha and upon merging with the abutting lands would be 37.17 ha. The proposed severed and retained lots do not meet the minimum lot area requirements of the (A1) Zone. A successful Zoning By-law Amendment application would be required to recognize the smaller lot sizes.

RELEVANT CONSULTATION

- Legal Services Division

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Role and Responsibilities of the Committee of Adjustment (PD02116(a))

In December 2002, City Council endorsed a staff report related to the Roles and Responsibilities of the Committee of Adjustment. The recommendations included the following:

“That the Planning and Development Department be authorized and directed to prepare an Information Report, to the Committee of the Whole, when an appeal is made to the of a Local Planning Appeal Tribunal (LPAT) decision made by the Committee of Adjustment to support an application(s) that was not supported by staff. In response to such a report, Council may determine its position on the Committee of Adjustment decision and may instruct Legal Services to attend the LPAT Hearing, in support of the Committee’s decision, and to retain outside professional(s) accordingly.”

The proposal cannot be supported for the following reasons:

- (i) The proposed Consent is not consistent with the Provincial Policy Statement because the severance will create a residential lot and severances which create new residential lots in prime agricultural areas are prohibited.
- (ii) The proposed Consent is not consistent with the Greenbelt Plan which discourages lot creation for residential uses and may only be permitted for a residence surplus to a farming operation as a result of a farm consolidation.
- (iii) The proposed Consent does not comply with the policies of the Rural Hamilton Official Plan in regard to severances and would require an Official Plan Amendment in order to address the lot creation policies.

Zoning By-law Amendment

The proposed lots do not conform to the 40.4 ha minimum lot area requirements of the Agriculture (A1) Zone. The lands to be retained will have a lot area of 1.14 ha and the lands to be conveyed will have a lot area of 19.2 ha. The proposed severances would require a Zoning By-law Amendment to modify the zoning to recognize the smaller lot sizes of the lands to be conveyed and the lands to be retained.

ALTERNATIVES FOR CONSIDERATION

Option 1:

Council could proceed with the appeal and direct appropriate Legal Services and Planning staff to attend the LPAT Hearing in opposition to the approved severance application, as recommended in this Report.

Option 2:

Council may direct staff to withdraw the appeal letter, which was filed by staff against the decision of the Committee of Adjustment to the LPAT. Provided that no further appeals are filed, this option would allow the Committee of Adjustment's consent approval to stand. However, a successful Official Plan and Zoning By-law Amendment would be required prior to the Consent being finalized.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth

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

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A": Location Map

Appendix "B": Severance Sketches

Appendix "C": FL/B- 20:86 Consolidated Staff Comments

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Appendix "D": January 21, 2021 Meeting Minutes

Appendix "E": Notice of Decision