



Hamilton

**COMMITTEE OF ADJUSTMENT**

City Hall, 5<sup>th</sup> floor, 71 Main Street West, Hamilton, ON L8P 4Y5  
Telephone (905) 546-2424, ext. 4221, 3935 Fax (905) 546-4202  
E-mail: [cofa@hamilton.ca](mailto:cofa@hamilton.ca)

**NOTICE OF PUBLIC HEARING**

**Application for Consent/Land Severance**

**APPLICATION NUMBER: FL/B-21:77**

**SUBJECT PROPERTY: 0 Highway No. 8, Flamborough**

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**You are receiving this notice because you are either:**

- Assessed owner of a property located within 60 metres of the subject property
  - Applicant/agent on file, or
  - Person likely to be interested in this application
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**APPLICANT(S):** Agent Tim Bullock  
Owners Paul & Heather Pollex

**PURPOSE OF APPLICATION:** To validate the title of a parcel of land under the provisions of Section 57(1) of the Planning Act:

1. Notwithstanding the Applicants' position that there has not been a contravention of the Act, the City of Hamilton and the Land Registry Office for Hamilton Wentworth appear to believe otherwise;
2. The Applicants have incurred significant expense associated with a string of failed sale transactions, each of which would have closed but for clear evidence of compliance with the Act; and
3. Any further development of the Property will require the City of Hamilton's consent, and that consent does not appear to be forthcoming so long as the Property is not a "lot of record".

**Lands for Validation:** Part 2 on attached sketch

**BACKGROUND:** See attached Schedule

The Committee of Adjustment will hear this application on:

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**DATE:** Thursday, October 7<sup>th</sup>, 2021  
**TIME:** 1:25 p.m.  
**PLACE:** Via video link or call in (see attached sheet for details)

To be streamed at  
[www.hamilton.ca/committeeofadjustment](http://www.hamilton.ca/committeeofadjustment)  
for viewing purposes only

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## **PUBLIC INPUT**

**Written:** If you would like to submit written comments to the Committee of Adjustment you may do so via email or hardcopy. Please see attached page for complete instructions, including deadlines for submitting to be seen by the Committee.

**Orally:** If you would like to speak to this item at the hearing you may do so via video link or by calling in. Please see attached page for complete instructions, including deadlines for registering to participate.

## **MORE INFORMATION**

For more information on this matter, including access to drawings illustrating this request:

- Visit [www.hamilton.ca/committeeofadjustment](http://www.hamilton.ca/committeeofadjustment)
- Call 905-546-CITY (2489) or 905-546-2424 extension 4221, 4130, or 3935
- Email Committee of Adjustment staff at [cofa@hamilton.ca](mailto:cofa@hamilton.ca)

DATED: September 9<sup>th</sup>, 2021

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Jamila Sheffield,  
Secretary-Treasurer  
Committee of Adjustment

***Information respecting this application is being collected under the authority of the Planning Act, R.S.O., 1990, c. P. 13. All comments and opinions submitted to the City of Hamilton on this matter, including the name, address, and contact information of persons submitting comments and/or opinions, will become part of the public record and will be made available to the Applicant and the general public.***

# PLAN OF SURVEY OF PART OF LOTS 14 & 15, CONCESSION 5 TOWNSHIP OF BEVERLY, COUNTY OF WENTWORTH

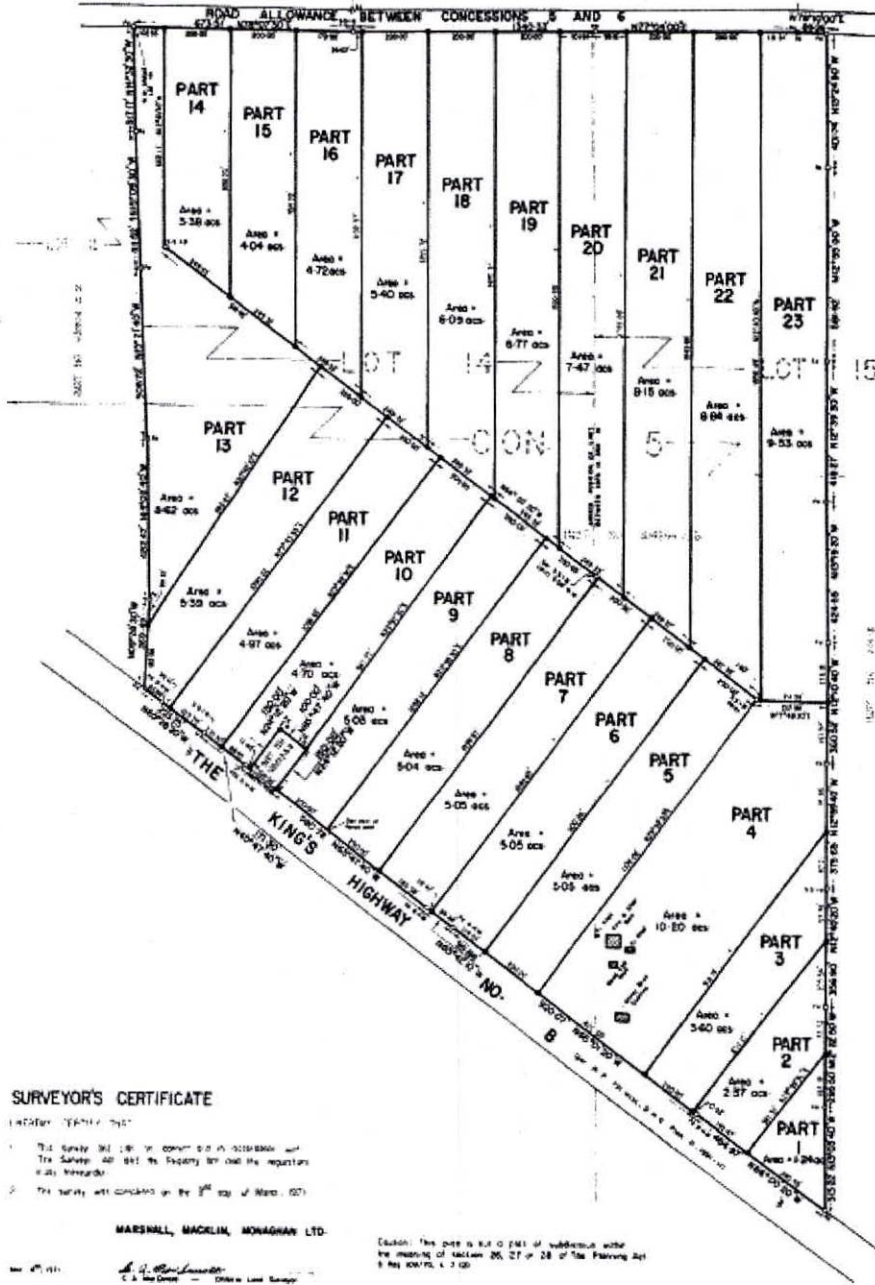
SCALE: 1" = 200'  
0/8"

CON. 6

LOT 14                      LOT 15                      LOT 16

RECORDED AND DEPOSITED AS  
PLAN 62R-275  
*J. H. Marshall Ltd.*

*Levinde Marshall*  
DEPUTY REGISTRAR FOR THE  
PROPERTY SERVICES OF THE  
COUNTY OF WENTWORTH



I HEREBY CERTIFY THAT THE ABOVE IS A TRUE AND ACCURATE REPRESENTATION OF THE SURVEY AS SHOWN ON THE DRAWING.  
*J. H. Marshall Ltd.*  
Surveyor

**LEGEND**

- ROAD ALLOWANCE
- - - - - UNDEVELOPED LOTS
- DEVELOPED LOTS
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**SURVEYOR'S CERTIFICATE**

- The survey and plan are correct and in accordance with the Survey and Plan Regulations and the requirements of the Act.
- The survey was completed on the 27th day of March, 1971.

MARSHALL, MACKLIN, MONAGHAN LTD.

*J. H. Marshall Ltd.*  
City of Toronto, Ontario, Canada

Enacted: This plan is a true and accurate representation of the survey and plan as shown on the drawing of sections 25, 27 & 28 of the Planning Act R.S.O. 1967, c. 210.

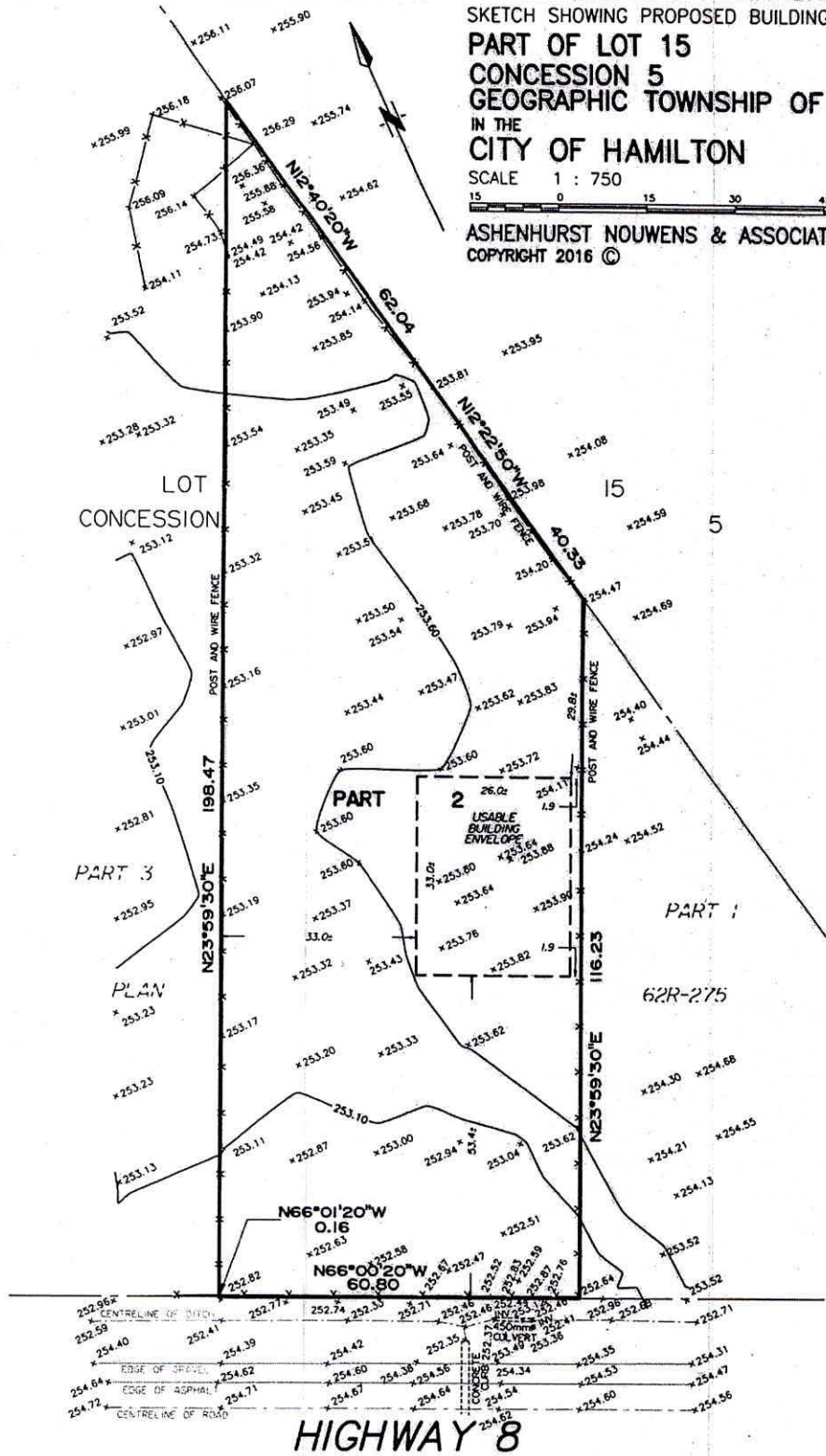
MARSHALL, MACKLIN, MONAGHAN LTD.  
230 Spadina Ave., Toronto, Ontario, Canada  
Tel. 361-2211  
Fax. 361-2211

SKETCH SHOWING PROPOSED BUILDING AREA  
**PART OF LOT 15**  
**CONCESSION 5**  
**GEOGRAPHIC TOWNSHIP OF FLAMBOROUGH**  
**IN THE**  
**CITY OF HAMILTON**

SCALE 1 : 750



ASHENHURST NOUWENS & ASSOCIATES INC.  
 COPYRIGHT 2016 ©



**HIGHWAY 8**

FIELD WORK COMPLETED ON THE 11th DAY OF APRIL, 2016.

APRIL 20, 2016  
 DATE

*[Signature]*  
 HARRY KALANTZAKOS  
 ONTARIO LAND SURVEYOR

**TEMPORARY BENCHMARK NOTE:**  
 CENTRELINE OF ROAD AT THE INTERSECTION OF HIGHWAY 8 AND  
 DRIVEWAY ON 1007 HIGHWAY 8  
 ELEVATION: 253.45

**ASHENHURST NOUWENS & ASSOCIATES INC.**  
 PROFESSIONAL ENGINEERS & ONTARIO LAND SURVEYORS  
 225 KING WILLIAM STREET, SUITE 204, HAMILTON, ONTARIO L8R 1B1



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DRAWN BY  
 E.W.A.

CHK'D BY  
 H.K.

FILE No.

**16037 TOPO**

## SCHEDULE

### APPLICATION FOR A CERTIFICATE OF VALIDATION

#### PAUL POLLEX AND HEATHER POLLEX

The Applicants have been the legal and beneficial owners of the Property since April 22, 1974 and have paid municipal property taxes since that date. The Applicants now wish to sell the Property however their most recent purchasers were concerned about a potential contravention of the Act in June 1970. To avoid complications with the eventual sale of the Property, the Applicants are requesting a Certificate of Validation in respect of the Property.

#### *Background*

The subject lands were originally part of a large parcel of land owned by Mr. Angus MacInnes. On June 24, 1970 Mr. MacInnes severed the large parcel into smaller lots with the commonly used (and at that time legal) process known as "checkerboarding". Checkerboarding allowed an owner to subdivide their land into blocks, much like a checkerboard, and to simultaneously convey the lots to 2 different transferees, so that each transferee would receive a block of land that was not adjacent to any other block owned by them. The Applicants were not involved in the checkerboarding transaction.

The *Planning Act* (the "Act") was amended on June 26, 1970 to close the checkerboarding exemption to the usual subdivision control provisions of the Act. Note that checkerboarding was an accepted legal strategy for subdividing land when the subject property was severed, and the Act did not restrict the practice until 2 days after the checkerboarding was complete.

Mr. MacInnes' lawyer incorrectly described the subject property in the transfer that facilitated the checkerboarding process, and that error was rectified on March 10, 1971 by the registration of a correcting deed as instrument no. AB198162. It is the Applicants' position that the 1971 transfer was not a contravention of the Act, because it merely granted proper title to the Applicants' predecessor in title who was otherwise entitled to clean title when she acquired the land on June 24, 1970. We are prepared to make further legal submissions to the Committee on this point if required.

#### *Basis for this Application*

The Applicants have continuously owned the Property since April 22, 1974, and since then they have diligently paid all property taxes levied against the Property. They now wish to sell the Property as part of their retirement plan. The Property has been "sold" to several purchasers over the years, but each purchaser has terminated their Agreement of Purchase and Sale because of confusion around the validity of checkerboarding as a method of severing land in June 1970.

One of the purchasers terminated their Agreement of Purchase and Sale when they learned that the Property was not a "lot of record" with the City of Hamilton's planning

department. Apparently, the City does not recognize the Property as a legal lot, although it has been collecting tax from the Applicants since 1974.

Further, this Property shares a single parcel register and PIN (17541-0084) with the other lots severed from the original parcel. The Property was never converted from the registry system, presumably due to confusion in the Land Registry Office about the validity of the checkerboarding which was completed.

The Applicants request a Certificate of Validation pursuant to section 57(1) of the Act, on the grounds that:

1. Notwithstanding the Applicants' position that there has not been a contravention of the Act, the City of Hamilton and the Land Registry Office for Hamilton Wentworth appear to believe otherwise;
2. The Applicants have incurred significant expense associated with a string of failed sale transactions, each of which would have closed but for clear evidence of compliance with the Act; and
3. Any further development of the Property will require the City of Hamilton's consent, and that consent does not appear to be forthcoming so long as the Property is not a "lot of record".

The Applicants are not seeking to avoid the City of Hamilton's planning process. On the contrary, they merely need to show prospective purchasers that the City will consider applications in respect of the Property, which is not currently the case when the Property is not a "lot of record".

A Certificate of Validation remains the most effective way to address the City of Hamilton's and the Land Registry Office's confusion around title to the Property.