



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Growth Management Division**

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	April 5, 2022
<b>SUBJECT/REPORT NO:</b>	Site Alteration Appeal for the property known as 2330 Guyatt Road, Glanbrook, Denied by the Director of Growth Management and Appealed by the Owner (PED22036) (Ward 11)
<b>WARD(S) AFFECTED:</b>	Ward 11
<b>PREPARED BY:</b>	Alvin Chan (905) 546-2424 Ext. 2978
<b>SUBMITTED BY:</b>	Carlo Ammendolia Acting Director, Growth Management Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That the **Appeal of Site Alteration Application 2021 144589 000 00 PF, by P&L Livestock Limited, c/o Dave Pitblado, Owner**, to permit a stockpile of 1,750 cubic metres of topsoil for future spreading to replace soils for the existing agricultural operation (Sod Farm), for the property located at 2330 Guyatt Road, Glanbrook, as shown on Appendix "A" to Report PED22036, be **Denied**, on the following basis:

- (a) That the site alteration is not in keeping with the general intent and purpose of Site Alteration By-law No. 19-286; and,
- (b) That the requested site alteration does not meet the regulations and criteria of Site Alteration By-law No. 19-286.

**EXECUTIVE SUMMARY**

Site Alteration activities were observed at 2330 Guyatt Road without a valid Site Alteration Permit, resulting in an Order to Comply being issued by City of Hamilton Municipal Law Enforcement on June 25, 2021, whereby a Site Alteration Permit application was to be made no later than July 12, 2021 (see Page 3 of Appendix "B" to Report PED22036).

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In response to the Order to Comply, the owner submitted Site Alteration Application 2021 144589 000 00 PF, on July 8, 2021. The application was deemed to be incomplete due to a lack of details / information on July 9, 2021; and, was subsequently amended by the owner with the additional required details / information on August 12, 2021.

The updated application proposed to permit a stockpile of 1,750 cubic metres of topsoil for future spreading in order to replace soils for the existing agricultural operation, being a sod farm (see Appendix “B” to Report PED22036).

The Site Alteration Application was denied by the Director of Growth Management, on December 24, 2021. Staff noted that the proposed stockpile is not consistent with the regulations for “Stockpiling for Agricultural or Commercial Operations” per Section 6(1) of the Site Alteration By-law No. 19-286.

Additionally, per peer review by the Agriculture and Rural Affairs Committee, the proposal was confirmed not to be necessary for the use identified, nor a “Normal Farm Practice” per Section 11(4) of the Site Alteration By-law No. 19-286 (see Appendix “C” to Report PED22036).

Based on the foregoing, the proposed site alteration could not be supported per the Letter of Denial dated December 24, 2021 (see Appendix “D” to Report PED22036), as it does not maintain the general intent and purpose, nor comply with the regulations and criteria as prescribed by Site Alteration By-law No. 19-286.

The owner appealed the decision to deny the Site Alteration Application on January 20, 2022 and requested that the proposed Site Alteration Application be considered by the Planning Committee (see Appendix “E” to Report PED22036).

***Alternatives for Consideration – See Page 9***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: None

Staffing: None

Legal: The application is subject to the *Municipal Act*, and there are no requirements for a Public Meeting. By-law No. 19-286 requires the City Clerk to notify the owner once a hearing date before the Planning Committee has been fixed to consider an appeal of the decision by the Director of Growth Management to deny a Site Alteration Application.

## **HISTORICAL BACKGROUND**

On November 28, 2019, Council approved Site Alteration By-law No. 19-286. Section 11(4) of By-law No. 19-286 provides the criteria in reviewing a Site Alteration application. It is also noted that Section 6 of By-law No. 19-286, also prescribes the regulations for “Stockpiling for Agricultural or Commercial Operations” (see Appendix “C” to Report PED22036)

Delegated approval authority for Site Alteration Permits is prescribed under Section 11, whereby per subsection 3, the City of Hamilton (Director) shall be satisfied that the proposed site alteration will be undertaken in accordance with the Site Alteration By-law (see Appendix “C” to Report PED22036); and, that in the event of refusal per Section 11(5), written refusal shall be provided (see Appendix “D” to Report PED22036).

Lastly, per Section 18 of Site Alteration By-law No. 19-286, if the Director refuses to issue a site alteration permit, the applicant may appeal the refusal to the Planning Committee or any successor Committee by requesting an appeal in writing to the Clerk within 30 days of being notified of the refusal (see Appendix “C” and “E” to Report PED22036).

As for the subject lands, Site Alteration activities were observed at 2330 Guyatt Road without a valid Site Alteration Permit, resulting in an Order to Comply being issued by City of Hamilton Municipal Law Enforcement on June 25, 2021, whereby a Site Alteration Permit application was to be made no later than July 12, 2021 (see Page 3 of Appendix “B” to Report PED22036).

With respect to the subject application, on July 8, 2021, an application for a Site Alteration permit was received and was deemed to be incomplete due to a lack of details / information on July 9, 2021. The application was amended by the owner with the additional required details / information on August 12, 2021.

The amended application sought to permit a stockpile of 1,750 cubic metres of topsoil for future spreading to replace soils for the existing agricultural operation, being a sod farm (see Appendix “B” to Report PED22036).

On December 24, 2021, the Site Alteration Application was denied by the Director of Growth Management, and notice was sent to the applicant advising of the decision (see Appendix “D” to Report PED22036).

On January 20, 2022, the owner appealed the decision by the Director of Growth Management to deny the Site Alteration Permit and requested that the matter be considered by the Planning Committee (see Appendix “E” to Report PED22036).

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**Details of Submitted Application**

**Location:** 2330 Guyatt Road, Glanbrook

**Owner** P&L Livestock Limited

**Applicant:** P&L Livestock Limited  
c/o: Dave Pitblado

**Property Description:** Frontage: ±500 metres (irregular)  
Lot Depth: ±911.5 metres (irregular)  
Area: ± 870,000 square metres

**POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

City of Hamilton Site Alteration By-law No. 19-286:

By-law No. 19-286 provides regulations for Site Alteration within the City of Hamilton (see Appendix “C” to Report PED22036), with the purpose being:

- (a) to control and regulate site alteration on lands within the City of Hamilton;
- (b) to ensure site alteration is undertaken for necessary or beneficial purposes, not primarily for financial gain;
- (c) to minimize adverse impacts on infrastructure, environment and community in respect of site alteration undertakings; and,
- (d) to promote and protect agricultural resources.

All of which apply to:

- a) excavating, depositing or stockpiling fill or topsoil,
- b) removing topsoil, and,
- c) altering the grade of land.

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In review of the application and submitted letter from the owner dated July 8, 2021, given that “the exact locations and dates are impossible to know at this stage, there is no formal work program, the material will simply be used on an ‘as-needed’ basis” (see Page 2 of Appendix “B” to Report PED22036), the proposed site alteration does not conform to the intent of the City of Hamilton Site Alteration By-law No. 19-286 in that it is unclear if the volume requested is necessary for the farm operation and does not have regard for the regulations per Section 6 for the “Stockpiling for Agricultural or Commercial Operations”. In particular, the proposed stockpile will not be:

- (a) used, depleted and refreshed on a continuous basis during periods when the stockpiles are actively in use in the agricultural or commercial operation;
- (b) removed and the existing grade restored while the agricultural or commercial operation is suspended or during periods when the stockpiles are not actively in use in the agricultural or commercial operation; and,
- (c) substantially changed within 6 months.

As requires by Section 6 of By-law No. 19-286.

Additionally, the proposal fails to satisfy the criteria per Section 11(4) of By-law No. 19-286 (see Appendix “C” to Report PED22036). In particular, the proposed site alteration is identified and deemed not to be required for the current agricultural operation at this time; and, also deemed not to be part of a “Normal Farm Practice” upon peer review by the City’s Agricultural and Rural Affairs Committee.

Therefore, there is no evidence that top soil rehabilitation or spreading across this property is necessary as part of a Normal Farm Practice and will not be completed within the term of the site alteration permit, nor can the grading and rehabilitation plans for the site be finalized given the lack of timing and a workplan, thereby failing to satisfy the following criteria:

- a) whether the primary use of the site is the depositing of fill on the site;
- b) whether the proposed site alteration is necessary for the purpose identified in the application;
- c) whether the proposed site alteration is part of a normal farm practice;
- d) whether the proposed site alteration is likely to be completed within the term of the site alteration permit;
- o) the final grading and rehabilitation plans for the site; and,

Based on the foregoing, the Site Alteration Application was denied (see Appendix “D” to Report PED22036), on the basis that the proposed site alteration does not maintain the general intent and purpose of the Site Alteration By-law and does not meet the regulations and criteria for site alteration of By-law No. 19-286.

## **RELEVANT CONSULTATION**

### **Departments/Agencies having no comments or concerns:**

- Development Engineering, Growth Management Division;
- Heritage and Urban Design, Planning Division;
- Transportation Operations & Maintenance, Public Works; and,
- Niagara Peninsula Conservation Authority.

### **Agriculture and Rural Affairs Committee**

Comments received from the Agricultural and Rural Affairs Committee identified that the site and farm are well drained and any ‘low lying areas’ are natural floodplains from the Twenty Mile Creek which are not to be altered without conservation authority approvals. There is no evidence that top soil rehabilitation or spreading across this property is required.

Accordingly, the proposed Site Alteration is deemed not to be required for the current farming operation and does not meet the definition of a “Normal Farm Practice”, as defined by Site Alteration By-law No. 19-286.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The amended application sought to permit a stockpile of 1,750 cubic metres of topsoil for future spreading to replace soils for the existing agricultural operation, being a sod farm (see Appendix “B” to Report PED22036).

On November 28, 2019, Council approved Site Alteration By-law No. 19-286. Section 11(4) of By-law No. 19-286 provides the criteria in reviewing a Site Alteration application. It is also noted that Section 6 of By-law No. 19-286, also prescribes the regulations for “Stockpiling for Agricultural or Commercial Operations” (see Appendix “C” to Report PED22036).

The City of Hamilton may approve a Site Alteration Application if the general intent and purpose of the By-law is maintained, and the proposal has regard for the criteria, as set out in Section 11 of By-law No. 19-286 (see Appendix “C” to Report PED22036).

In review, Section 6(1) of By-law 19-286 regulates the “Stockpiling for Agricultural or Commercial Operations (see Appendix “C” to Report PED22036).” In particular:

**Stockpiling for Agricultural or Commercial Operations**

- 6 (1) Despite subsection 11(1), this By-law does not prohibit or require a site alteration permit for the stockpiling of fill or topsoil on land for sale or exchange or use as an incidental part of an agricultural or commercial operation undertaken as a permitted use of the land, provided that any such stockpiles,
- (d) are used, depleted and refreshed on a continuous basis during periods when the stockpiles are actively in use in the agricultural or commercial operation;
  - (e) are removed and the existing grade restored while the agricultural or commercial operation is suspended or during periods when the stockpiles are not actively in use in the agricultural or commercial operation; and
  - (f) no stockpile remains substantially unchanged for longer than 6 months.

Per the application and submitted letter from the owner dated July 8, 2021, “the exact locations and dates are impossible to know at this stage, there is no formal work program, the material will simply be used on an ‘as-needed’ basis.”

Accordingly, the proposed stockpile is not currently required for the agricultural operation, and thus the stockpile will not be removed, and the existing grade restored while the agricultural or commercial operation is suspended or during periods when the stockpiles are not actively in use in the agricultural or commercial operation. Additionally, with no work program and dates, the proposed stockpile would not be used or depleted and remain substantially unchanged for longer than 6 months.

Furthermore, the proposed Site Alteration was reviewed against the criteria under Section 11(4) of Site Alteration By-law 19-286 (see Appendix “C” to Report PED22036), whereby the following issues were identified per the Letter of Denial (see Appendix “D” to Report PED22036):

- (a) whether the primary use of the site is the depositing of fill on the site;

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Per the application and submitted letter from the owner dated July 8, 2021, “the exact locations and dates are impossible to know at this stage, there is no formal work program, the material will simply be used on an ‘as-needed’ basis” (see Page 2 of Appendix “B” to Report PED22036).

Given that the stockpile is not required for the current agricultural operation, nor approved to be a “Normal Farm Practice”; and, due to the non-conformity with the stockpiling regulations noted above, the use of the proposed site alteration is not deemed necessary for the purpose identified under a Normal Farm Practice, resulting in the depositing of fill on site being deemed to be the primary use.

(a) whether the proposed site alteration is necessary for the purpose identified in the application;

Similarly, as this is deemed not to be a required for the current agricultural operation; and not approved as “Normal Farm Practice” it does not satisfy the proposed purpose noted in the application.

Furthermore, it is noted that the stockpile will not be removed, and the existing grade restored while the agricultural or commercial operation is suspended or during periods when the stockpiles are not actively in use in the agricultural or commercial operation.

Additionally, with no work program and dates, the proposed stockpile would not be used or depleted and remain substantially unchanged for longer than 6 months, all of which does not conform to the regulations of Section 6(1) of Site Alteration By-law No. 19-286.

(b) whether the proposed site alteration is part of a normal farm practice;

In accordance with the peer review, the proposed site alteration does not meet the definition of a “Normal Farm Practice”, as defined by Site Alteration By-law No. 19-286.

In particular, the site and farm are well drained and any ‘low lying areas’ are natural floodplains from the Twenty Mile Creek which are not to be altered without conservation authority approvals. There is no evidence that top soil rehabilitation or spreading across this property is required.

(c) whether the proposed site alteration is likely to be completed within the term of the site alteration permit;

Per the application and submitted letter from the owner dated July 8, 2021, “the exact locations and dates are impossible to know at this stage, there is no formal work

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program, the material will simply be used on an ‘as-needed’ basis” (see Page 2 of Appendix “B” to Report PED22036).

Accordingly, the proposed timelines and use of the stockpile fail to satisfy the terms that govern Stockpiling for Agricultural or Commercial Operations, as prescribed under Section 6 of Site Alteration By-law No. 19-286, amongst other terms of the By-law.

(o) the final grading and rehabilitation plans for the site; and,

As the proposed stockpile is deemed not to be a required nor an approved “Normal Farm Practice” there is no evidence that top soil rehabilitation or spreading across this property is required and thus final conditions and the associated grading and rehabilitation of the site is deemed unsatisfactory as it cannot be properly evaluated.

Based on the foregoing, the proposed Site Alteration does not conform to the Site Alteration By-law 19-286 and was subsequently denied on December 24, 2021, (see Appendix “D” to Report PED22036).

## **ALTERNATIVES FOR CONSIDERATION**

Council may deny the recommendation of the Senior Director of Growth Management Division, and support the proposed Site Alteration, as submitted. However, it is staff’s opinion that this option does not maintain the general intent and purpose of the City of Hamilton Site Alteration By-law No. 19-286.

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

### **Community Engagement & 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.*

### **Built Environment and Infrastructure**

*Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.*

### **Our People and Performance**

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

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**APPENDICES AND SCHEDULES ATTACHED**

Appendix "A" to Report PED22036 - Location Map

Appendix "B" to Report PED22036 - Site Alteration Application and Grading Plan(s)

Appendix "C" to Report PED22036 - Sections 6, 11 and 18 of Site Alteration By-Law No. 19-286

Appendix "D" to Report PED22036 - Letter of Denial

Appendix "E" to Report PED22036 - Appeal Letter

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