



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

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	January 16, 2024
<b>SUBJECT/REPORT NO:</b>	Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Consent Application FL/B-23:61 for Lands Located at 169 and 193 Weirs Lane, Flamborough (PED24029) (Ward 13)
<b>WARD AFFECTED:</b>	Ward 13
<b>PREPARED BY:</b>	Joe Buordolone (905) 546-2424 Ext. 7856
<b>SUBMITTED BY:</b>	Shannon McKie Acting Director, Planning and Chief Planner Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That Council gives approval to the following actions, as detailed in Report PED24029, respecting Committee of Adjustment Consent application FL/B-23:61 by Franco Romano, on behalf of Robert Eric Bernstein (owner), for the lands located at 169 and 193 Weirs Lane, Flamborough, as shown on Appendix "A" attached to Report PED24029, granted by the Committee of Adjustment but recommended for denial by the Planning and Economic Development Department:

- (a) That Council of the City of Hamilton proceed with the appeal to the Ontario Land Tribunal against the decision of the Committee of Adjustment to approve Consent application FL/B-23:61.
- (b) That Council directs appropriate Legal Services and Planning staff to attend the future Ontario Land Tribunal hearing in opposition to the decision of the Committee of Adjustment to approve Consent application FL/B-23:61.

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**EXECUTIVE SUMMARY**

The applicant, Franco Romano, on behalf of Robert Eric Bernstein (owner), submitted Consent application FL/B-23:61 to permit the severance of a parcel of land to re-establish two lots which were inadvertently merged in title in the early 2000's. The severed lands have an area of 0.61 hectares while the retained lands have an area of 14.03 hectares. The existing and proposed uses of the land are residential and no changes to either severed or retained lands was proposed.

Consent application FL/B-23:61 was considered by the Committee of Adjustment on October 19, 2023. Planning staff recommended the Consent application to sever the lands into two parcels be denied, as the proposal did not meet the criteria under Section 51(24) of the *Planning Act*, and the Lot Creation policies of the Rural Hamilton Official Plan (see Appendix "B" attached to Report PED24029). The Committee of Adjustment granted the application without the recommended conditions from staff that were included in the staff comments to the Committee of Adjustment if they were to grant the Consent application (see Appendices "C" and "E" attached to Report PED24029).

Under the *Planning Act*, appeals must be filed within 20 days of the date of giving notice of the decision. As such on November 14, 2023, 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. Staff recommend proceeding with the appeal. A hearing date has been not yet been set.

**Alternatives for Consideration – See Page 8**

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** Planning 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.

**Staffing:** One representative from Legal Services, one representative from the Planning Division and one representative from Source Water Protection would be required for the preparation and attendance at the Ontario Land Tribunal hearing.

**Legal:** No legal implications are expected.

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## **BACKGROUND**

### **Consent Application**

The subject property is located at 169 and 193 Weirs Lane in Flamborough (see Appendix “A” attached to Report PED24029). In September 2023, the applicant submitted a Consent application to permit the conveyance of a parcel of land to re-establish two parcels that were inadvertently merged in title. The applicants noted the parcels merged in the early 2000’s due to estate circumstances.

The subject property is located south of Highway 6, on the west side of Weirs Lane at 169 and 193 Weirs Lane in Flamborough (see Appendix “A” attached to Report PED24029).

Staff comments recommended the Consent application be denied as the proposal did not meet Section 51(24) of the *Planning Act* and did not comply with the policies of the Rural Hamilton Official Plan (see Appendix “B” attached to Report PED24029). The Committee of Adjustment granted approval of Consent Application FL/B-23:61 on October 19, 2023, without the necessary conditions identified by staff in the staff comments.

On November 14, 2023, Development Planning staff appealed the decision of the Committee of Adjustment to the Ontario Land Tribunal.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENT**

### ***Planning Act***

The application has been reviewed with respect to the criteria 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 section, the council of the municipality may by by-law constitute and appoint a committee of adjustment for the municipality composed of such persons, not fewer than three, as the council considers advisable. R.S.O. 1990, c. P.13, s. 44 (1).

51(24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

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- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
  - (i) the adequacy of utilities and municipal services.

53(1) An owner, chargee or purchaser of land, or such owner's, chargee's or purchaser'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. 2021, c. 25, Sched. 24, s. 4 (1).

53(12) A council or the Minister in determining whether a provisional consent is to be given shall have regard to the matters under subsection 51 (24) and has the same powers as the approval authority has under subsection 51 (25) with respect to the approval of a plan of subdivision and subsections 51 (26) and (27) and section 51.1 apply with necessary modifications to the granting of a provisional consent. 1994, c. 23, s. 32.”

Staff are of the opinion that the effect of the application to sever a parcel of land for the purposes of residential uses does not comply with the policies of the Rural Hamilton Official Plan. Through the review of the Consent application, staff determined the proposed severed parcel would not be an appropriate size to support typical daily sewage flows from a residential dwelling as it is proposed to be serviced by private water and wastewater services. Based on the foregoing, the Consent application does not have regard for the criteria for the subdivision of land under the *Planning Act* and should be denied.

### **Provincial Policy Framework**

The Provincial planning policy framework is established through the *Planning Act* (Section 3) and the Provincial Policy Statement (2020). The *Planning Act* requires that all municipal land use decisions affecting planning matters be consistent with the Provincial Policy Statement (2020).

The mechanism for the implementation of the Provincial plans and policies is through the Official Plan. Through the preparation, adoption and subsequent Ontario Land Tribunal approval of the City of Hamilton Official Plans, the City of Hamilton has established the local policy framework for the implementation of the Provincial planning policy framework. As such, matters of provincial interest (e.g., efficiency of land use and balanced growth) are reviewed and discussed in the Official Plan analysis below.

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**Rural Hamilton Official Plan**

The subject site is designated “Rural” and “Open Space” within Schedule D – Rural Land Use Designation. The following policies, amongst others, apply to the proposal.

- “F.1.14.2.1 The following policies shall apply to all severances and lot additions, including minor lot line adjustments and boundary adjustments in the Agriculture, Rural, Specialty Crop, and Open Space designations, and designated Rural Settlement Areas, as shown on Schedule D – Rural Land Use Designations: (OPA 18)
- 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; and,
      - 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;
    - b) Severances that create a new lot(s) may be permitted for only the following purposes:
      - vii) In the Rural designation only, non-agricultural uses which may only be permitted in accordance with Sections D.4.1, F.1.14.2.1, and F.1.14.2.3;
- F.1.14.2.3 In the Rural designation, severances that create a new lot, except surplus farm dwelling severances, may be considered only for agricultural uses, agriculture-related uses, existing rural resource-based commercial uses, existing rural resource-based industrial uses, and existing rural institutional uses, provided all of the relevant conditions of Section D.4.1 and the following conditions are met.
- a) New lots for agricultural uses and agriculture-related uses shall demonstrate by a report prepared by an accredited professional knowledgeable in farm economics, such as an agrologist or

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agronomist, that the proposed agricultural lot(s) is(are) of sufficient size and nature to be reasonably expected to:

- i) Sustain a commercially viable farm operation;
  - ii) Allow farm operators the flexibility to change the existing and proposed farm operation in the event of business failure; and,
  - iii) Allow farm operators the flexibility to diversify and intensify the production of agricultural commodities in response to changing economic conditions and trends in agriculture;
- b) The City may request comments on the report required in F.1.14.2.3 a) from the Province or an independent peer reviewer, at the expense of the applicant, prior to consideration of the new lot for severance approval.

C.5.1.1 No draft, conditional, or final approval of development proposals shall be granted by the City for any development in Rural Hamilton that could impact existing private services or involves proposed private services until the development proposal has complied with all of the following: (OPA 23)(OPA 26)

- c) The minimum size for a new lot proposed in an application for a severance, lot addition or draft plan of subdivision with an existing or proposed private water system and/or existing or proposed private sewage disposal system shall:
- i) be the size required to accommodate the water system and sewage disposal system with acceptable on-site and off-site impacts;
  - ii) shall include sufficient land for a reserve discharge site or leaching bed, as determined by the requirements in Policies C.5.1.1 a) and b); and,
  - iii) not be less than 0.4 hectare (one acre) in size. The maximum lot size shall be in accordance with Policy F.1.14.2.1 f). (OPA 26)”

Staff note that the proposal is for a consent to re-establish two parcels of land that were inadvertently merged in title in the early 2000’s. Staff note that the Rural Hamilton Official Plan does not contain a policy that speaks to the inadvertent merging of lands within the rural area of the City of Hamilton other than in the case of a farm dwelling made surplus as a result of merging in title. Due to the length of time passed since the

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merging of the lands, staff have reviewed the consent through the existing policy framework of the “Rural” and “Open Space” land use designations. In addition to Development Planning comments provided for the Consent application, Source Protection Planning were also not in support. Noting Policy C.5.1 of the Rural Hamilton Official Plan, Source Protection Planning deemed the proposed lot area of 0.61 hectares to not be large enough to attenuate nitrate effluent from the septic system to levels below the drinking water standards at the property boundary, and in-turn prevent offsite impacts. Source Protection Planning staff determined that the appropriate minimum lot area would be one hectare.

Staff further note that the applicant had received a conditionally approved Niagara Escarpment Commission Development Permit to permit the proposed consent application, dated September 28, 2021, which included a note that the City of Hamilton Rural Hamilton Official Plan policies also apply to the subject site and, therefore, the Niagara Escarpment Commission conditional approval did not guarantee approval by the City of Hamilton.

Comments submitted by the Niagara Escarpment Commission for Consent application FL/B-23:61 noted that the conditionally approved permit had since expired, and that Niagara Escarpment Commission staff object to the proposal until the owner obtains a permit.

As such, staff are of the opinion that the consent does not maintain the general intent of the Rural Hamilton Official Plan policies that prohibit the creation of a new lot for residential purposes in the Rural designation except when a dwelling may be severed as a result of a farm consolidation or within a Rural Settlement Area. The proposed consent does not meet the criteria.

### **City of Hamilton Zoning By-law No. 05-200**

The subject lands are zoned Rural (A2) Zone and Conservation / Hazard Land - Rural (P6) Zone. Staff note that the required lot area for a single detached dwelling within the Rural (A2) and Conservation / Hazard Land - Rural (P6) Zones is 0.4 hectares with a minimum lot width of 30.0 metres. Staff note that the proposed severed and retained parcels both meet the zoning for the minimum lot area and lot width. Staff further note that the condition, if approved, to provide confirmation of the existing uses on the lands to be retained/conveyed, in order to determine compliance with the permitted uses of the Rural (A2) Zone, was not included in the final decision.

### **RELEVANT CONSULTATION**

- Corporate Services Department, Legal Services Division;

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- Niagara Escarpment Commission; and,
- Source Protection Planning.

**ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The proposed Consent application to permit the conveyance of two parcels of land for residential purposes does not meet the criteria of Section 51(24) of the *Planning Act* on the basis that it does not comply with the policies of the Rural Hamilton Official Plan.

Staff note that the Consent application to create a new parcel of land for residential purposes, not resulting in a surplus farm dwelling from a farm consolidation, is prohibited on lands designated Rural within the Rural Hamilton Official Plan. Furthermore, conditions that were requested by staff to be added to the approval of the application, in the case that the application was approved, were not included by the Committee of Adjustment.

Therefore, it is appropriate for the City to appeal the Committee of Adjustment's approval of Consent application FL/B-23:61 to the Ontario Land Tribunal.

**ALTERNATIVES FOR CONSIDERATION**

Council may direct staff to withdraw the appeal letter, which was filed by staff against the decision of the Committee of Adjustment to the Ontario Land Tribunal. Provided that no further appeals are filed; this option would allow the Committee of Adjustment's decision to permit the Consent application.

**APPENDICES AND SCHEDULES ATTACHED**

Appendix "A" to PED24029 – Location Map  
Appendix "B" to PED24029 – Staff Comments for FL/B-23:61  
Appendix "C" to PED24029 – FL/B-23:61 Committee of Adjustment Decision  
Appendix "D" to PED24029 – FL/B-23:61 Committee of Adjustment Application

JB/sd