

## FL/B-20:01 – 177 Highway 8, Flamborough

### Consolidation Report

The attached comments have been reviewed with regard to the above noted Committee of Adjustment application and the following comments are submitted:

Should the Committee grant the severance, an approval should be subject to the following condition(s):

1. To the satisfaction of the Director of Heritage and Urban Design:
  - a. An Environmental Impact Statement/Linkage Assessment prepared by a qualified ecological consultant according to the City of Hamilton's EIS and Linkage Assessment Guidelines (2010);
  - b. A Tree Protection Plan (TPP) prepared according to the City of Hamilton's Tree Protection Guidelines (2010).
2. That the owner shall receive final and binding approval of minor variance application FL/A-20:04.
3. That the proponent shall carry out an archaeological assessment of the entire property and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances shall take place on the subject property prior to the approval of the Director of Planning confirming that all archaeological resource concerns have met conservation requirements. All archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the Ministry of Heritage, Sport, Tourism and Culture Industries.

Should deeply buried archaeological materials be found on the property during any of the above development activities the Ontario Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the proponent should immediately contact both MHSTCI and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Small Business and Consumer Services (416.326.8392)."

**Development Planning – West Development**

The purpose of this application is to permit the conveyance of an irregular shaped parcel of land and to retain a parcel of land for residential purposes. Staff note that at the previous hearing, the application was tabled due to Natural Heritage concerns. The Application was tabled a second time due to staff concerns related to natural heritage concerns, and concerns related to comprehensive development of the lands to the west. Staff note that the applicant has been informed that they were to complete an Environmental Impact Statement for the northern portion of the property prior to re-submitting. Staff note that the EIS prepared by North-South Environmental Inc. dated May, 2021 has not yet been approved by Natural Heritage Planning staff, nor has the Tree Protection Plan prepared by North-South Environmental Inc. dated February 17, 2022 or the Significant Wildlife Habitat Mapping dated August 22<sup>nd</sup>, 2022. Staff further note that an EIS has not been completed for the retained lands (Part 1) which has been requested by Natural Heritage staff in order to support the subject consent. The proponent has also not addressed the comprehensive development concerns raised by Staff and the adjacent landowner at the October 5<sup>th</sup>, 2023 hearing.

	<b>Frontage</b>	<b>Depth</b>	<b>Area</b>
<b>SEVERED LANDS:</b>	20 m <sup>±</sup>	Irregularly shaped lot m <sup>±</sup>	8.0 ha <sup>±</sup>
<b>RETAINED LANDS:</b>	111 m <sup>±</sup> (Highway 8) & 24 m <sup>±</sup> (Oak Avenue)	Irregularly shaped lot m <sup>±</sup>	10.4 ha <sup>±</sup>

**Rural Hamilton Official Plan**

The Rural Hamilton Official Plan designates the property as “Greenville Rural Settlement Area” and “Open Space” on Schedule D - Rural Land Use Designations and “Settlement Residential” and “Natural Open Space (Hazard Lands)” in Map 8a: Greenville Rural Settlement Area.

- “3.5.3.6        New *development* shall conform to Section C.2, Natural Heritage System policies in Volume 1 of this Plan.
  
- 3.5.5.3        The predominant form of residential *development* shall continue to be the single detached dwelling.
  
- 3.5.5.6        The division of land by consent may be considered when it is clear that a Plan of Subdivision is not necessary. When the severance of land by consent is deemed appropriate, regard shall be had to the other policies of this Rural Settlement Area Plan and Volume 1 of this Plan.
  
- 3.5.9.1        It is intended that Natural Open Space (Hazard Lands) will be conserved and that land uses or activities which could be affected by prevailing

hazardous conditions such as flooding or erosion, will be prohibited in and adjacent to these areas.

3.5.9.2 No *development*, including the placing or removal of fill shall be permitted without the written approval of the Hamilton Region Conservation Authority.

3.5.9.4 Natural Open Space (Hazard Lands) shall be appropriately identified in the Zoning By-law, All lots which abut a watercourse or its tributaries shall be subject to specific Zoning By-law regulations regarding lot area and setbacks from the watercourse and its tributaries. These requirements may be reduced, by amendment to the Zoning By-law, subject to the requirements of the Hamilton Regional Conservation Authority, the Niagara Escarpment Commission, the Province and the City.

F.1.14.2.4 Within designated Rural Settlement Areas all proposed severances that create a new lot and proposed lot additional shall:

- a) comply with the policies of this Plan including a rural settlement area plan where one exists;
- b) be compatible with and not hinder surrounding agricultural operations;
- c) conform to the Zoning By-law;
- d) be permitted only when both severed and retained lots have frontage on a public road;
- e) meet Minimum Distance Separation requirements; and,
- f) meet the requirements of Section C.5.1, Private Water and Wastewater Services, except as permitted in F.1.14.2.7 d). (OPA 18)

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

- a) The existing or proposed water supply system shall include a well with sufficient quantity of water to sustain the use. A cistern system that meets current accepted standards, may, to the satisfaction of the City, be an additional component of the water supply system."

The proposed development consists of a severance application to sever one parcel of land from the existing property. The proposed severed and retained parcels are identified as Parts 1 and 2. The purpose of the severance is to facilitate the development of the severed lands with a single residential dwelling on the northernmost portion of the severed lands. The retained lands (Part 1), will have a total area of approximately 10 ha and a frontage of 111 metres along Highway 8 and a frontage of 24 metres along Oak Avenue. The retained lands will include the existing frontage along Oak Avenue in order to facilitate a potential future right of way extension from Oak Avenue northwards.

The agent also advised that it is intended to merge the severed lands (Part 2) on title with Block 9 of Registered Plan of Subdivision 62M-903 to the south, which is under the same ownership. Block 9 has a total area of approximately 1,578 square metres, and 20 metres of frontage along Oak Avenue. The severed lands (Part 2) will have a total area of approximately 8 hectares (incl. Block 9). The width of the severed lands will be 38 metres, although only 20 metres will have frontage on Oak Avenue. The portion of the severed lands to be developed for residential use has an area of approximately 4,413 square metres (excl. Block 9). In addition to the Natural Heritage concerns raised by Staff, The Applicant has also not demonstrated how the incorporation of Block 9 (an unopened road allowance) into the proposed development will not adversely impact the ability of the lands to the west to develop (Weirs Lane) . Draft Plan of Subdivision 25T-93012, which was draft approved on the lands to the west of the subject lands, shows a future road connection and extension of Oak Avenue, where the proposed single detached dwelling is to be constructed. A Recent Formal Consultation (FC-22-103) has also indicated that the extension of Oak Avenue is to be used for access for the development of the lands to the west. The main access for the lands to be developed would be through Block 9; however, if Block 9 is to be utilized for access to the lands to the west, as indicated on Draft Plan of Subdivision 25T-93012, the lands to be severed may not have functional access onto Oak Avenue. The Applicant has not demonstrated to Staff how this issue has been addressed.

### **Town of Flamborough Zoning By-law No. 90-145-Z**

The subject lands are zoned Settlement Residential Zone R2-24(H) which permits single detached dwellings. The proposed lot sizes comply with the Zoning By-law; however, a minor variance application is required in order to address the deficiency in lot width. The applicant has submitted a minor variance application FL/A-20:04 in order to address the deficiency. It is worth noting that the subject lands are also subject to an (H) Holding Provision. The proponent will be required to remove the Holding Provision on the subject lands prior to development.

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

The southern portion of the lands are zoned Conservation/Hazard Land Rural (P6) Zone. New Buildings and Structures are not permitted on a vacant lot. Therefore, no dwelling use is permitted on the portion of the lot zoned P6. There are no dwellings proposed on the P6 zoned portion of the subject lands.

### **Archeology**

The subject property meets five of the ten criteria used by the City of Hamilton and Ministry of Heritage, Sport, Tourism and Culture Industries for determining archaeological potential:

1. Within 250 metres of known archaeological sites;

2. Within 300 metres of a primary watercourse or permanent waterbody, 200 metres of a secondary watercourse or seasonal waterbody, or 300 metres of a prehistoric watercourse or permanent waterbody;
3. In the vicinity of distinctive or unusual landforms;
4. In areas of pioneer EuroCanadian settlement; and
5. Along historic transportation routes.

These criteria define the property as having archaeological potential. Accordingly, Section 2 (d) of the Planning Act and Section 2.6.2 of the Provincial Policy Statement apply to the subject application.

As part of previous Consent Applications F-09-01 to F-12-01, a Stage 1 Archaeological Assessment (P2000-001-109) for a portion of the subject property was submitted to the City and the Ministry of Heritage, Sport, Tourism and Culture Industries. Staff request a copy of the letter from the Ministry as confirmation.

On February 20th, 2019, the following condition was provided with regard to Committee of Adjustment Severance File FL/B-20:01 (177 Hwy 8, Flamborough):

**“Condition:** That the proponent shall carry out an archaeological assessment of the entire property and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances shall take place on the subject property prior to the approval of the Director of Planning confirming that all archaeological resource concerns have met conservation requirements. All archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the Ministry of Heritage, Sport, Tourism and Culture Industries.

Should deeply buried archaeological materials be found on the property during any of the above development activities the Ontario Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the proponent should immediately contact both MHSTCI and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Small Business and Consumer Services (416.326.8392).”

Staff require an archaeological assessment of the entire property be submitted.

### **Cultural Heritage**

The property known as 177 Highway #8 is adjacent to a high concentration of properties listed on the City of Hamilton’s Inventory of Heritage Buildings as well as 184 Highway #8 and 665 Governor’s Road, designated under Part IV of the Ontario Heritage Act.

Additionally, the subject property is located within the Greensville Cultural Heritage Landscape and an Active Inventory Area, the Greensville Built Heritage Inventory.

Accordingly, the following section of the Rural Hamilton Official Plan, Volume 1, applies: B.3.4.6.2.

Where new construction and/or alterations or additions to existing structures are proposed in a Cultural Heritage Landscape, key considerations are the visual and physical impacts on landscape features, typically public views of the building fabric, building set-back, the streetscape and significant vistas.

The City recognizes there may be cultural heritage properties that are not yet identified or included in the Register of Property of Cultural Heritage Value or Interest nor designated under the Ontario Heritage Act, but still may be of cultural heritage interest. These may be properties that have yet to be surveyed, or otherwise identified, or their significance and cultural heritage value has not been comprehensively evaluated but are still worthy of conservation.

Accordingly, the following section(s) of the Rural Hamilton Official Plan, Volume 1, apply: B.3.4.1.3, B.3.4.2.1(g), and B.3.4.2.1(h).

The applicant proposes to permit the conveyance of an irregular shaped parcel of land and to retain a parcel of land for residential purposes.

The subject property is adjacent to a high concentration of properties listed on the City of Hamilton's Inventory of Heritage Buildings, properties designated under Part IV of the Ontario Heritage Act, and within the Greensville Cultural Heritage Landscape, Staff have reviewed the application and are of the opinion that the cultural heritage value or interest of the adjacent heritage properties will be conserved. Staff have no further comments on the application as circulated.

### **Natural Heritage**

The proponent has identified that it was previously stated by Natural Heritage Planning Staff that: "Generally, our policies do not allow new development (lots) within Core Areas – you would have to demonstrate no negative impacts. Even though the building envelope will be outside of the Core Area, the new resident may remove vegetation and manicure the Core Area even if it is within their ownership. I recommend that lot boundaries do not include Core Areas, there is a lot of room for the lot so this should be possible."

North-South Environmental Inc. provided a response that: "It appeared from these comments that development was not precluded entirely, but that impacts needed to be averted. There was no mention of SWH in these comments."

It should be noted that Significant Wildlife Habitat (SWH) is part of what makes up a Core Area per Rural Hamilton Official Plan (RHOP) policy C2.3 & C2.3.4. Core areas are clearly defined as Significant Habitat of threatened or endangered species under the Natural Heritage Systems – Core Area policies. In the Provincial Policy Statement Section 2.1.5. Development and Site alteration shall not be permitted in: d) Significant Wildlife Habitat.

It should also be noted that development is not precluded in the context of constructing a single dwelling. The proposed lot line will go through the hedgerow in the western portion of the property that has been identified as Significant Wildlife habitat and Significant Woodlands in the Mid-Spencer Creek Greenville Rural Area Sub-Watershed Study, and as a Linkage through the Environmental Impact Study (EIS) prepared by North-South Environmental Inc. dated May 2021. In addition, the Western hedgerow has been identified as a Linkage area and there is potential that it could be included as Significant Woodland.

The following excerpt states: "It was determined through natural heritage studies that the woodlot to the north and the hedgerow to the west did not support Significant Wildlife Habitat (SWH)." Yet, further in the memo the following statement is made, "The proposed building envelope avoided native trees in the hedgerow along the western portion of the property, which forms the primary linkage and significant wildlife habitat." These two statements appear to contradict one another.

It is unclear how the Natural Heritage studies completed in the EIS could have provided a fulsome analysis with respect to the woodlot to the North as this area does not appear to have been studied completely as Part 2 is the single area that has been studied.

There is evidence provided by both the EIS and Mid-Spencer Creek Greenville Rural Area Sub-Watershed Study, that there is a wetland and a watercourse going through the northern woodlot, these features provide evidence that the Woodland should be considered Significant and there are implications to the current proposed lot line as a 30m Vegetated Protection Zone is required for any development proposed, per RHOP Volume 1, Section 2.4.11 e). Additionally, the Mid-Spencer Creek Greenville Rural Area Sub-Watershed Study has identified Significant Wildlife habitat to be present within the woodlot to the north and has considered the Woodlot and Western Hedgerow to be Significant Woodlands.

It should be clarified that the EIS prepared by North-South Environmental Inc. date May 2021 has not yet been approved by Natural Heritage Planning staff, nor has the Tree Protection Plan prepared by North-South Environmental Inc. dated February 17, 2022. In addition, the EIS has not yet been sent to ESIAEG for review as the EIS has not yet been approved by Natural Heritage planning staff.

Although the effort of providing additional mitigation measures to prevent negative impacts on the Core area is appreciated, it is unclear to Natural Heritage Planning staff as to why a severance is necessary if the purpose of the application is to allow the construction of a single dwelling?

The upper portion (Part 1) of the subject property has not been studied through an EIS, it is not clear if the new lot created could support any development. It is not a responsible planning decision to create an undevelopable lot. If the purpose of the application is simply to construct a dwelling, the application could go through a different planning

process and the proposed development would not be going through a Core area. Lot lines as part of a new lot are considered development per RHOP. Please provide clarification. There has been a recent submission for a subdivision proposal in the adjacent lot proposing a road through the subject property in the area of the severed lot line. Is this something that the applicant is aware of?

Natural Heritage planning staff recommend completing an Environmental Impact Study for Part 1 of the subject lands prior to submitting the application for Consent.

**Recommendation:**

Based on the preceding information, Staff recommends that the application be **denied** as the Applicant has not addressed the above noted concerns from Staff related to natural heritage, archaeological potential, and the comprehensive development of adjacent lands to the west.

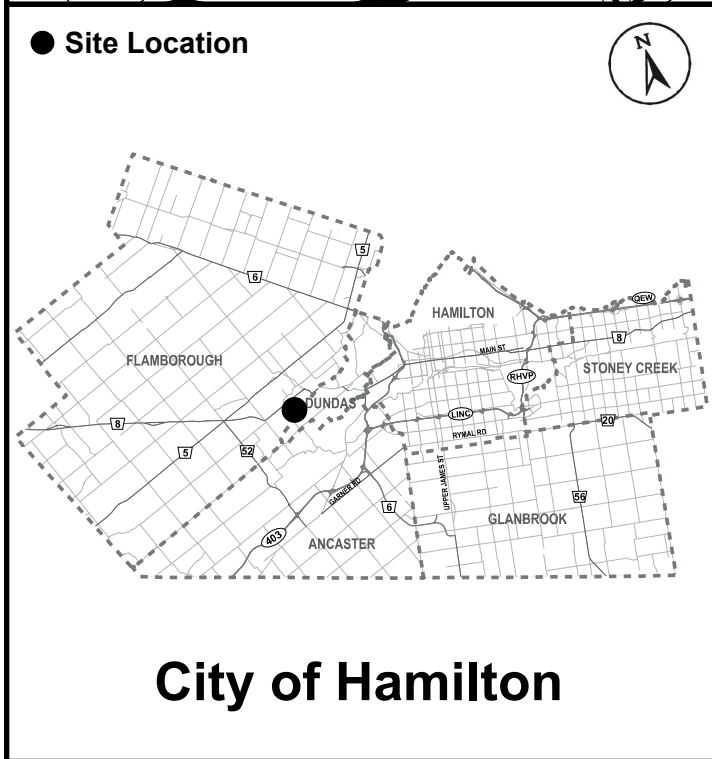
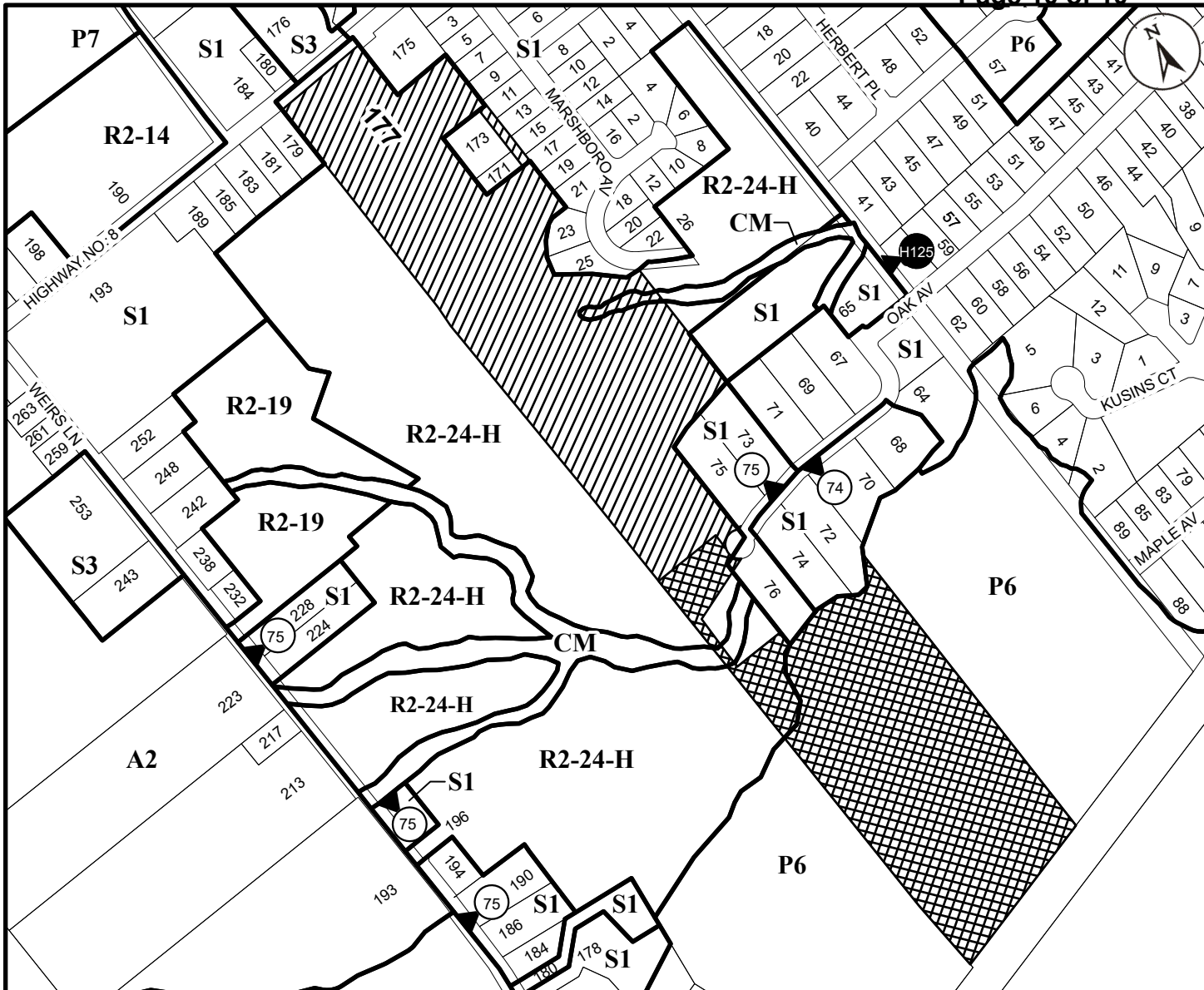
**CONDITIONS: (If Approved)**

1. To the satisfaction of the Director of Heritage and Urban Design:
  - a. An Environmental Impact Statement/Linkage Assessment prepared by a qualified ecological consultant according to the City of Hamilton's EIS and Linkage Assessment Guidelines (2010);
  - b. A Tree Protection Plan (TPP) prepared according to the City of Hamilton's Tree Protection Guidelines (2010).
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**Please see previous comments from October 5<sup>th</sup>, 2023 Hearing for other departments comments.**



## Committee of Adjustment

<p><b>Subject Property</b> 177 Highway 8, Flamborough (Ward 13)</p> <p>  Lands to be Retained   Lands to be Severed                 </p>	<p><b>File Name/Number:</b> FL/B-20-01</p> <p><b>Date:</b> September 27, 2023</p> <p><b>Technician:</b> AL</p> <p>Map Not To Scale</p> <p style="text-align: center;"><b>Appendix "A"</b></p> <div style="text-align: center;">                   Hamilton             </div>
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PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT