



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	February 23, 2024
SUBJECT/REPORT NO:	Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Consent Application FL/B-23:73 for Lands Located at 2050 Centre Road, Flamborough (PED24045) (Ward 15)
WARD AFFECTED:	Ward 15
PREPARED BY:	Joe Buordolone (905) 546-2424 Ext. 7856
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 PED24045, respecting Committee of Adjustment Consent Application FL/B-23:73 by Patrick G. Morris, on behalf of Marion Pawlik (owner) and Nathan Aubert and Megan Bros (applicants/purchaser), for the lands located at 2050 Centre Road, Flamborough, as shown on Appendix "A" attached to Report PED24045, 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-23:73;
- (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-23:73.

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EXECUTIVE SUMMARY

The agent, Patrick G. Morris, on behalf of Marion Pawlik (owner) and Nathan Aubert and Megan Bros (applicants/purchaser), submitted Consent application FL/B-23:73 to permit the severance of a parcel of land to re-establish two lots which were inadvertently merged in title. The lands are municipally known as 2050 Centre Road in Flamborough, as shown in the Location Map attached as Appendix “A” to Report PED24045. The application did not provide details as to when the parcels inadvertently merged in title, however, staff note that the parcel was originally severed in 1989 and a single detached dwelling was constructed prior to 2004. The severed lands have an area of 0.73 hectares while the retained lands have an area of 41.3 hectares. The existing and proposed uses of the land are residential and no changes to either severed or retained lands were proposed.

Consent application FL/B-23:73 was considered by the Committee of Adjustment on December 7, 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 (refer to Appendix “B” attached to Report PED24045 for staff comments). At the Committee meeting, the application was amended to increase the severed portion of lands to 0.73 hectares in size to satisfy Source Water Planning concerns.

The Committee of Adjustment granted approval of the amended application without applying 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 (refer to Appendix “B” attached to Report PED24045).

Under the *Planning Act*, appeals must be filed within 20 days of the date of giving notice of the decision. As such on December 20, 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 not yet been set.

Alternatives for Consideration – See Page 8

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Planning has submitted the required fee of \$400 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.

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

Legal: No legal implications are expected.

BACKGROUND

In October 2023, the agent 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 subject property is located on the north side of Centre Road, south of Mountsberg Road at 2050 Centre Road in Flamborough (refer to Appendix “A” attached to Report PED24045). The application did not indicate when the parcels inadvertently merged in title, however, staff note that the parcel was originally severed in 1989 and a single detached dwelling was constructed prior to 2004. The severed lands are rectangular in shape and were proposed to have an area of approximately 0.43 hectares and have 39.0 metres of frontage along Centre Road. The retained lands also have a rectangular shape and were proposed to have an area of approximately 41.4 hectares with 366.95 metres of frontage. Both the retained and severed lands have an existing single detached dwelling and have vegetation throughout the lands.

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 (refer to Appendix “B” attached to Report PED24045). The Committee of Adjustment granted approval of Consent Application FL/B-23:73 on December 7, 2023, despite the recommendations by staff in the staff report, including potential conditions of approval (refer to the Decision included as Appendix “C” attached to Report PED24045).

On December 20, 2023, Development Planning 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.

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).

Plan of Subdivision Approvals

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,

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

Consents

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 wastewater flows from a residential dwelling as it is proposed to be serviced by private water and wastewater services. Staff note that the application was amended at the Committee meeting to increase the area of the proposed severed lands to meet the recommended lot area that Source Water Protection Planning would be able to support,

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subject to the submission and a review of a Scoped Hydrogeological Report. Staff note that the Committee removed the recommended condition from their approval (refer to Appendix “B” and “C” attached to Report PED24045). Staff further note that the proposal does not re-establish the existing lot fabric that resulted from the inadvertent merger.

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 Rural Hamilton Official Plan analysis below.

Rural Hamilton Official Plan

The subject site is designated “Rural” 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,

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- 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 agricultural-related uses shall demonstrate by a report prepared by an accredited professional knowledgeable in farm economics, such as an agrologist or 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)

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- 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)”

The proposal is to re-establish two parcels of land that were inadvertently merged in title. The Rural Hamilton Official Plan does not contain a policy that addresses 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.

Staff have reviewed the Consent application through the existing policy framework of the “Rural” land use designation. In addition to Development Planning comments provided for the Consent application, Source Protection Planning were not in support of the original size of the severed lands, as per the Rural Hamilton Official Plan, and requested that the lot area be increased to a minimum of 0.73 hectares and a Scoped Hydrogeological Report be completed as a condition. Staff note that at the committee meeting, the application was amended to increase the area of the severed lands to meet the recommended parcel size that Source Water Protection Planning deemed appropriate. Staff note that the Hydrogeological Report was not submitted. Despite the staff recommendation and the inclusion of possible conditions, the Committee approved the application, as amended, without the requested condition of a Hydrogeological Report.

As such, staff are of the opinion that the Consent application does not maintain the general intent of the Rural Hamilton Official Plan as the policies 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 is located within a Rural Settlement Area. The proposed consent does not meet the criteria outlined in the policies.

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.

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

The subject lands are zoned Rural (A2) Zone, Conservation / Hazard Land - Rural (P7) Zone, and Conservation / Hazard Land - Rural (P8) Zone. The proposed severed and retained lands meet zoning provisions for lot size.

RELEVANT CONSULTATION

- Corporate Services Department, Legal Services Division; 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* and 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-23:73 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 Report PED24045 – Location Map
- Appendix “B” to Report PED24045 – Staff Comments for FL/B-23:73
- Appendix “C” to Report PED24045 – FL/B-23:73 Committee of Adjustment Decision
- Appendix “D” to Report PED24045 – FL/B-23:73 Committee of Adjustment Application

JB/sd