

**CITY OF HAMILTON**

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

<b>TO:</b> Chair and Members Planning Committee	<b>WARD(S) AFFECTED:</b> WARD 8
<b>COMMITTEE DATE:</b> July 9, 2013	
<b>SUBJECT/REPORT NO:</b> Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Severance Application HM/B-13:27, Louis Serafini, Fengate Capital Management Ltd. (Owner), 1400 Upper James Street (Hamilton) (PED13123) (Ward 8)	
<b>SUBMITTED BY:</b> Tim McCabe General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> Daniel Barnett (905)-546-2424 Ext. 4445
<b>SIGNATURE:</b>	

**RECOMMENDATION:**

That Council agrees to the following actions, as detailed in Report PED13123, respecting the appeal of City of Hamilton Committee of Adjustment Severance Application HM/B-13:27 (Louis Serafini, Fengate Capital Management Ltd. (Owner), 1400 Upper James Street (Hamilton), as shown on Appendix "A" to Report PED13123, approved by the Committee of Adjustment, but recommended for Tabling by the Planning and Economic Development Department;

- (a) That Council of the City of Hamilton proceed with the appeal to the Ontario Municipal Board (OMB) against the decision of the Committee of Adjustment to approve Application HM/B-13:27, without appropriate conditions;
- (b) That Council directs appropriate Legal Services, Planning, and Growth Management staff to attend the future Ontario Municipal Board (OMB) Hearing in opposition to the decision of the Committee of Adjustment to approve Application HM/B-13:27, without appropriate conditions.

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**EXECUTIVE SUMMARY**

Application HM/B-13:27, to permit the severance of a 7,920 sq. m. parcel from an existing 38,117 sq. m. commercial property, in order to add the severed lands to a subdivision located to the rear of the property at 1125 West 5<sup>th</sup> Street, to establish a stormwater management pond, was considered by the City of Hamilton Committee of Adjustment on May 2, 2013. Comments to the Committee of Adjustment, from the Planning Division, recommended that the application was premature and should be tabled to ensure orderly development and to provide appropriate conditions, as the proposal did not meet the criteria of Section 51(24) of the Planning Act, and with the Policies of the City of Hamilton Official Plan (see Appendix "B"). The Committee of Adjustment approved the severance application for the reasons set out in Appendix "C", and deleted two of the conditions recommended by staff and changed the wording of a third condition (see Appendix "D").

Due to the appeal period, 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.

*Alternatives for Consideration - See Page 17.*

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)**

**Financial:** Planning and Economic Development Department staff has submitted the required fee of \$125.00 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. The Hearing would likely take between one to three days.

**Staffing:** One representative each from Planning, Growth Management, and Legal Services would be required for preparation and attendance at an OMB Hearing. One member of Planning staff, and one member of Growth Management staff would attend as an expert witness at the Hearing, should Council support Option 1.

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

**HISTORICAL BACKGROUND** (Chronology of events)

**Proposal:**

The subject property is located at 1400 Upper James Street (Hamilton) (see Appendix “A”).

The amended proposal is to sever 7,920 sq. m. of land, to be added to the property at 1125 West 5<sup>th</sup> Street, to establish a stormwater management pond (see Appendix “E”).

The application was reviewed against all applicable planning policy documents, which included the Planning Act, Places to Grow Plan, Provincial Policy Statement, Hamilton-Wentworth Official Plan, City of Hamilton Official Plan, Mewburn Neighbourhood Plan, and City of Hamilton Zoning By-law. Planning Division staff and Growth Management staff, while not opposed to the principal of the proposed severance, recommended the application be tabled in order to ensure conformity with the criteria in Section 51(24) of the Planning Act, ensure that the proposal was consistent with the policies of the Provincial Policy Statement, ensure that the proposal was in conformity with the policies of the Hamilton-Wentworth Official Plan and City of Hamilton Official Plan, and to ensure that appropriate conditions were imposed.

The Committee of Adjustment, at its meeting of May 2, 2013, approved the Severance application (see Appendix “C”), but deleted two conditions recommended by staff and changed the wording of a third condition.

**POLICY IMPLICATIONS**

**Planning Act:**

The application has been reviewed with respect to the criteria of the Planning Act.

- “53(1) Permits a land owner or the owners agent to apply for a consent application.
- 53(12) A Council or Minister, in determining whether a provisional consent is to be given, shall have regard to the matters under Sub-section 51(24).
- 51(24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, and welfare of the present and future inhabitants of the municipality and to:

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- a) The effect of development of the proposed subdivision on matters of provincial interest, as reflected in Section 2;
- b) Whether the proposed subdivision is premature or in the public interest;
- c) Whether the plan conforms to the Official Plan and adjacent plans of subdivision, if any;
- d) The number, width, location, and proposed grades and elevations of highways and the adequacy of them, and the highways linking the highway in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- e) The dimensions and shape of the proposed lots;
- f) The restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- g) Conservation of natural resources and flood control;
- h) The adequacy of utilities and municipal services.”

The proposed severance was approved without appropriate conditions with which to protect the health and safety of existing or future residents, to protect matters of provincial interest, protect the public interest, to conform to the policies of the City of Hamilton Official Plan and adjacent plans of subdivision, and to ensure adequate municipal services. Therefore, it is the opinion of staff that the appeal proceed in order to ensure that appropriate conditions are imposed to ensure that the proposed severance meets the criteria under Section 51(24) of the Planning Act.

**Provincial Policy Statement:**

The application has been reviewed with respect to the Provincial Policy Statement (PPS).

“1.1.3.1 Settlement Areas shall be the focus of growth, and their vitality and regeneration shall be promoted.

1.1.1 Healthy, liveable, and safe communities are sustained by:

- c) Avoid development and land use patterns which may cause environmental or public health and safety concerns.

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3.2.2 Contaminated sites shall be remediated, as necessary, prior to any activity on the site associated with the proposed use such that there will be no adverse effects.”

Staff had recommended a condition requiring that a Record of Site Condition (RSC) be undertaken if the severance was approved, in order to ensure that the subject lands are either not contaminated or are appropriately remediated so as not to cause a public health or safety concern. However, the Committee of Adjustment deleted the condition, the absence of which does not establish a healthy, liveable, and safe community and, therefore, the proposed severance, as approved by the Committee of Adjustment, is not consistent with the policies of the Provincial Policy Statement.

**Places to Grow Plan:**

The application has been reviewed with respect to the Places to Grow Plan. The following policies would apply:

- “2.2.2 1) Population and employment growth will be accommodated by:
- a) Direct a significant portion of new growth to the built-up areas of the community through intensification.”

As the proposal is for a severance to add lands to an adjacent subdivision within the built-up area, the proposal conforms to the policies of the Places to Grow Plan.

**Hamilton-Wentworth Official Plan:**

The subject property is designated as “Urban” in the Hamilton Wentworth Official Plan.

“C.3.1 A wide range of urban uses, defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas. These areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020. Accordingly, the Plan establishes a land use strategy for the Urban Area that consists of:

- Compact urban form, including mixed-use areas.

B.5 Recently there has been increased awareness of health issues and demand for more substantial commitments from all levels of government to safeguard public health. Regional emphasis on environmental preservation, healthy lifestyles, disease prevention, health promotion, and

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improved health services are examples of integrated responses, which can be expected, as we grow towards a sustainable Region.”

In order to safeguard public health, staff recommended, as a condition of severance approval, that a Record of Site Condition be undertaken, to the satisfaction of the City of Hamilton. The condition was deleted by the Committee of Adjustment and, as such, the proposed severance does not adequately safeguard public health. Therefore, the approved severance does not conform to the policies of the Hamilton-Wentworth Official Plan.

**City of Hamilton Official Plan:**

The subject property is designated as “Residential” and “Commercial” within the City of Hamilton Official Plan.

“A.2.1.1 The primary uses permitted in the areas, designated on Schedule “A” as “Residential”, will be for dwellings. Various types of dwellings are included within this designation, while preference will be given to the locating of similar densities of development together.

A.2.2.1 The primary uses permitted in areas exceeding 0.4ha, designated on Schedule “A” as “Commercial”, will be for Commerce. In this regard, Commerce is defined as establishments involved in the buying and selling of goods and services; business offices; and hotels, convention, and entertainment facilities.

A.5.1 Notwithstanding Sections A, B, and C of this Plan, the following uses will be permitted within all land use designations, provided that the land use compatibly is generally maintained and it is keeping with the intent and development standards set out in this Plan:

- i) Any operation of the Government of Canada, Government of Ontario, Regional Municipality of Hamilton-Wentworth, City of Hamilton, or any public agency, board, or commission, including Ontario Hydro and Hamilton Hydro Electric Commission, except for their maintenance and storage facilities.”

The front of the property is designated as “Commercial”, and is being used for commercial purposes, while the “Residential” designated lands at the rear are to be added to the proposed residential subdivision to the rear of the property. It should be noted that a stormwater management pond, owned and operated by the City of Hamilton, is a use not restricted in the Official Plan, however, the proposed severance is

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not to sever lands and turn those lands over to the City, but to add them to an abutting proposed residential subdivision.

“A.3.4.1 In accordance with the intent of the Regional Official Plan, consents to sever individual parcels of land within the City will generally be discouraged and limited, in accordance with the following provisions:

- ii) Severances will be discouraged which do not comply with the Development and Servicing Extension policies of Sub-section B.1 and the severance policies of the Regional Official Plan.
- iii) Severances will be discouraged where such severances would make it difficult to assemble adequate parcels of land which would permit planned development.

B.1.1 The Extension of municipal services will be consistent with the financial capability of the City and/or Region to meet the cost of such Extensions, and under the following circumstances:

- i) Where it is a logical extension of existing development;
- ii) Where the infilling and completion of partially developed Neighbourhoods will be achieved; or,
- iii) Where required in developed areas which are presently or partially serviced.

B.1.2 When judging the adequacy of municipal works and services, the needs of an entire Neighbourhood will be considered foremost. However, Council may consider a Development proposal in a Neighbourhood where such works and services are inadequate, provided that the needs of the Neighbourhood can be met when further Development occurs.

B.2.1 It is intended that all existing and future development within the City will be effectively serviced by the Water Distribution System in order to mitigate or prevent environmental and health problems or other hardships. This Plan will also encourage that all existing development, in time, be connected to the System in order to mitigate potential adverse environmental effects from development currently not connected to the System.

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B.2.2 It is intended that all new development or redevelopment within the City will be effectively serviced by the Sewage Disposal System, and that improvements or extensions will be made to this system, where necessary. It is recognized that growth in the City is subject to Sewage treatment capacities and, accordingly, the quality of effluent discharged into the environment. In this regard, the Plan will encourage the appropriate agencies to introduce adequate measures to provide for future improvements to the Sewage Disposal System.

B.2.3 It is intended that adequate measures be required or undertaken to ensure that Stormwater run-off within the City is safely and effectively managed. Accordingly, this Plan promotes the linkage of all new development to appropriate Storm Drainage facilities to minimize any adverse effects created by development on the natural environment.”

Staff recommended, as a condition of consent, that a 12m wide easement be established over a portion of the lands to be retained for the purpose of providing water, sanitary, and storm sewers for adjacent lands to the north and south. The inclusion of this condition would have allowed for the adequate servicing of adjacent lands, and would have constituted orderly development. However, the condition was deleted by the Committee of Adjustment, which compromises the City’s ability to provide water, sewage, and storm drainage services to neighbouring properties, and does not facilitate orderly development.

“A.2.1.8 It is the intent of Council that a variety of housing styles, types, and densities be available in all Residential areas of the City, and further, that proposals for new development or redevelopment will contribute to the desired mix of housing, where practicable. In this regard, Council will be guided by the Housing Policies of Sub-section C.7 and the Neighbourhood Plan Policies of Sub-section D.2.

D.2 The make-up of the Planning Units is designed to reflect the existing development pattern, as well as major physical features and land use concentrations. It is the general intent of the Plan that the identity of the Planning Units will be enhanced and that all development will be planned in ways which improve this identity.

D.2.2 The detailed planning for the distribution and location of various land uses in each Planning Unit will be determined or reviewed through the preparation of Neighbourhood Plans. In this regard, Council will ensure that all new development and/or redevelopment complies with the provisions of this Plan and the Neighbourhood Plan.



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D.2.5 Neighbourhood Plans for the Planning Units will indicate the location of proposed Arterial, Collector, and Local roads; the location of community facilities, such as Park areas, open spaces and School sites; the location and extent of lands set aside for Commercial or Institutional purposes; the distribution and mix of housing of varying densities; and the location and basic design of major Engineering Services and public utilities. When preparing Neighbourhood Plans, Council will consider the following:

- ii) That Residential development or redevelopment will be properly protected from conditions which Council determines may directly or indirectly have a noxious or otherwise detrimental effect on the health, safety, or welfare of the residents:
  
- v) In the design of developing Residential Neighbourhoods, the street pattern and subdivision layout will be to the satisfaction of Council, Energy efficient, provide access to all areas, and will:
  - a) Discourage through-traffic internally;
  - b) Discourage direct access off major roads to Neighbourhood Parks and Schools;
  - c) Where appropriate, identify measures to mitigate the impact of rail and vehicular noise on existing and proposed Residential development; and,
  - d) Be sensitive to the protection and utilization of natural or man-made features having cultural, aesthetic or other value.”

The proposed lands to be severed and utilized as a stormwater management pond are located within the Mewburn Neighbourhood Plan. The Mewburn Neighbourhood Plan establishes a local road passing through the lands to be severed. The proposed severance and intended use of the lands as a stormwater management pond disrupts the planned development of the Mewburn Neighbourhood Plan, and impacts the development potential of properties to the north of the severed lands in that these lands would lose future road access at the rear of the properties.

**Mewburn Neighbourhood Plan:**

The front of the subject property is designated “Commercial Retail Warehouse” and the rear of the property is designated “Single and Double”, in the Mewburn Neighbourhood Plan (see Appendix “F”). The Plan shows proposed local roads bisecting the proposed lands to be severed and, therefore, the proposal does not conform to the intended road pattern of the Mewburn Neighbourhood Plan.

**Urban Hamilton Official Plan:**

The Urban Hamilton Official Plan was adopted by Council on July 9, 2009, and received Ministerial Approval from the Ministry of Municipal Affairs and Housing on March 16, 2011. However, it has been appealed to the Ontario Municipal Board.

The subject property is designated “Mixed-Use - Medium Density” in the Urban Hamilton Official Plan.

“E.4.6 The Mixed-Use - Medium Density designation is found within the Community Nodes, Urban Corridors, and Neighbourhood elements of the Urban Structure. The intent of the Mixed-Use - Medium Density designation is to permit a full range of retail, service commercial, entertainment, and residential accommodation at a moderate scale. The designation recognizes the traditional mixed-use main streets in the City (outside of the Downtown Mixed-Use area), as well as other large commercial areas which serve the surrounding community or a series of neighbourhoods and which are intended to evolve and intensify into mixed-use, pedestrian oriented areas. Increasing the number of people who work and live within the area designated “Mixed-Use - Medium Density” will also contribute to the planned function of the area as a people place.

3.2.1 The following uses shall be permitted in all land use designations:

- a) Conservation uses such as forest, wildlife, and fisheries management, provided the use complies with Section C.2.0 - Natural Heritage System;
- b) Utilities, municipal infrastructure and transportation facilities, corridors and easements, wind turbines, electrical facilities used directly for the generation and distribution of electric power, natural gas and oil pipeline lines, telecommunication and new facilities approved under all relevant statutes, where the land(s) are less

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than 4 hectares in size, provided that the facility is not used for the purposes of maintenance or storage or railway yard;

- c) Wherever possible, the uses identified in Section C.3.2.1.b) shall be integrated with the general character of the surrounding uses through the provision of landscaping, screening and buffering, siting of structures, height control, and any other measures deemed to be appropriate by the City;
- d) Any operation of the Government of Canada, Province of Ontario, or City of Hamilton, not described in Policy C.3.2.1a) and b);
- e) Uses regulated for the purposes of Shipping and Navigation or uses incidental thereto, authorized by the Hamilton Harbour Commissioners Act, or any By-law, regulation, or other provision adopted pursuant to the Hamilton Harbour Commissioners Act or other Federal regulation; and,
- e) Community gardens.”

As the proposal is to maintain the existing commercial development that fronts onto Upper James Street, and to utilize the severed lands for a stormwater management pond, the proposal is consistent with the policies of the Urban Hamilton Official Plan.

“1.14.3.4 Consents for new lot creation for both the severed and retained lands for mixed-uses, commercial, institutional, or open space uses in the “Commercial/Mixed-Use and Institutional” designation shall be permitted, provided the following conditions are met:

- a) The lots severed for commercial, institutional, or open space uses shall comply with the policies of this Plan, including Secondary Plans, where one exists;
- b) The lots are in conformity with the Zoning By-law, or a minor variance is approved;
- c) The lots severed for residential uses, including mixed-use buildings which contain residential uses, shall comply with Section B.2.4 - Residential Intensification Policies, Section B.3.3 - Urban Design Policies, Section E.3.0 - Neighbourhoods Designation, and any other relevant policies of this Plan;

- d) The lots are fully serviced by municipal water and wastewater systems; and,
  - e) The lots have frontage on a public road.
- 1.14.3.7 Minor lot line adjustments shall be permitted, provided there is no increased fragmentation of a core area and the adjustments do not conflict with intent of the policies of this Plan.
- 1.2.7 Neighbourhood Plans are policies adopted by Council resolution and do not form part of the Official Plan. Any proposal for development or redevelopment must conform to the designations and policies in the Neighbourhood Plan.
- 1.2.8 Any amendment to the Neighbourhood Plan must be evaluated using the provisions of Policies F.1.1.3 and F.1.1.4, and shall require a formal Council decision to enact the amendment.
- 1.1.4 When considering amendments to this Plan, including Secondary Plans, the City shall have regard to, among other things, the following criteria:
- a) The impact of the proposed change on the City's vision for a sustainable community, as it relates to the objectives, policies, and targets established in this Plan; and,
  - b) The impact of the proposed change on the City's communities, environment and economy, and the effective administration of the public service."

As previously identified, staff had recommended, as a condition of consent, that a 12m wide easement be established over the lands to be retained for the purpose of providing water, sanitary, and storm sewers for adjacent lands to the north and south. The inclusion of this condition would have allowed for the adequate servicing of adjacent lands, and would have facilitated orderly development. However, the condition was deleted by the Committee of Adjustment, and the removal of the condition compromises the adequate servicing of the area and does not constitute orderly development.

- "3.6.1.1 The City shall require proponents of development or redevelopment proposals to document previous uses of the property(s) affected by the proposal for lands currently or previously used for:
- a) Employment (industrial), commercial, community, transportation, or utility purposes;

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- b) Activities involving the elimination or disposal of waste and other residues, including landfill sites or waste disposal facilities;
- c) Any activities involving the storage or use of hazardous substances, including fuels, oils, chemicals, paints, or solvents; and,
- d) Any use with the potential for site contamination, such as dry cleaning facilities, and gas stations.

3.6.1.2 Where there is potential for site contamination due to previous uses of a property, and a more sensitive land use is proposed, a mandatory filing of a Record of Site Condition is triggered, as outlined in Provincial Guidelines. The Record of Site Condition shall be submitted by the proponent to the City and the Province. The Record of Site Condition shall be to the satisfaction of the City.

3.6.1.4 Where there is potential for site contamination due to a previous use or uses on lands subject to development or redevelopment proposals, and a mandatory filing of a Record of Site Condition is triggered, the City shall:

- a) Withhold final approval of an application until acceptance of a Record of Site Condition. In the interim, conditional approval may be considered.”

As the lands to be severed presently form part of a commercial property, the potential for site contamination exists and, as such, staff recommended a Record of Site Condition as a condition of severance approval; however, the condition was deleted by the Committee of Adjustment. By deleting the condition, the proposal would not comply with Policies 3.6.1.2 and 3.6.1.4 of the Urban Hamilton Official Plan.

The policies of Section 5 of the Urban Hamilton Official Plan deal with the provision of municipal services, water, sanitary sewers, and storm sewers.

“5.3.5 All new development and redevelopment within the urban area shall be connected to the City’s water and wastewater system.

5.3.12 Water and wastewater systems shall be designed and constructed in accordance with the specifications and standards of the City, provincial guidelines, and other applicable standards, regulations and guidelines.

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- 5.3.15 The City shall be satisfied that adequate infrastructure services can be provided, prior to any development or intensification proceeding, and where technically and economically possible, the City shall require such services to be located underground.
- 5.4 The City shall ensure that appropriate stormwater management facilities are built and maintained to provide a safe and secure system for stormwater.
- 5.4.9 All land designated on Schedule E-1 - Urban Land Use Designations shall meet the following conditions:
- a) Development and/or redevelopment shall be connected to, or serviced by, a stormwater drainage system or other appropriate system such as ditches, or any other techniques acceptable to the City, Conservation Authorities, or the Province and/or detailed in a Stormwater Master Plan or other relevant study;
  - b) Development shall be in accordance with the system capacity for drainage and stormwater management, and where relevant, will conform to stormwater site management plans, a Stormwater Master Plan, site plans and/to other relevant studies, guidelines, or regulations; and,
  - c) Stormwater systems shall be designed and constructed in accordance with the City' standards and guidelines, provincial guidelines, stormwater master plans, master drainage plans, and any other relevant study or legislation."

In order to ensure adequate water, wastewater, and storm sewers are established and maintained, staff recommended that a 12m wide easement be established over the lands to be retained as a condition of consent approval, however, the Committee of Adjustment deleted the required condition. By deleting the condition, the proposal would not comply with Policies 5.3.15 and 5.4.9 of the Urban Hamilton Official Plan.

**City of Hamilton Zoning By-law:**

The subject property is zoned Restricted Community Shopping and Commercial "HH/S-1061", "HH/S-1061a", and "HH/S-1061b" District and Urban Protected Residential "C" and "C/S-1061a" District, in the City of Hamilton Zoning By-law, to which the proposed uses comply.

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The property at 1125 West 5<sup>th</sup> is zoned Agricultural “AA” District, however, in the Hamilton Zoning By-law, properties with more than one District are reviewed against the least restrictive lot width and area requirements. Once the lands to be severed are merged with 1125 West 5<sup>th</sup> Street, the severed lands would meet the minimum lot frontage requirement of 12m and the minimum lot area requirement of 360 sq. m. The lands to be retained will meet minimum lot frontage requirement of 12m and lot area requirement of 360 sq. m.

**RELEVANT CONSULTATION**

- Legal Services Division.
- Development Engineering, Growth Management Division.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

The proposal is to sever 7,920 sq. m. of land from the existing 38,117 sq. m. lot and to add the lands to the abutting property to the rear at 1125 West 5<sup>th</sup> Street.

The applicant's intended use for the lands to be severed is for a stormwater management pond. Planning staff and Growth Management staff does not oppose the intent of the severance, but require that appropriate conditions be imposed in order to ensure compliance with the relevant policies and ensure orderly development. To this end, six conditions were recommended by staff, as follows:

- 1) A new survey be submitted to the City;
- 2) The lands to be severed be merged in the same name and title as 1125 West 5<sup>th</sup> Street;
- 3) That a Record of Site Condition be submitted, to the satisfaction of the City of Hamilton;
- 4) That a 12m wide easement be established over a portion of the lands to be retained for water, sanitary, and storm sewers;
- 5) That the owner dedicates a portion of the lands to be retained for road widening purpose; and,
- 6) That the owner pays any outstanding realty taxes and/or other charges owing to the City Treasurer.

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The agent for the applicant objected to the inclusion of Conditions 3, 4, and 5.

The applicant's agent was of the opinion that Condition No. 3 was a condition "he had never seen when lands were being transferred between private land owners" (see Appendix "F" - Page 2). Staff has requested this for other applications of severance; that is, a Record of Site Condition be undertaken when conditions have warranted it. It is noted that most severances do not warrant a Record of Site Condition, due to the fact that most severances reviewed by the City are for residential purposes or for land that does not meet the criteria that would trigger the need for a Record of Site Condition. As the lands are being severed from a commercial property and being attached to a residential property, the situation warrants a Record of Site Condition and, as such, staff recommended the Record of Site Condition as a condition. The Committee of Adjustment chose not to include the condition in the severance approval.

With respect to Condition No. 4, the applicant's agent argued that there was already an existing easement for sewers (see Appendix "F" - Page 2). While it is true that there is an existing easement, it is only for a sanitary sewer and does not include water main or storm sewers, nor does the easement extend to the border of the lands to the south. As such, the existing easement does not cover all forms of municipal services, nor does it allow for servicing connections for abutting properties to the south. In order to ensure adequate and orderly servicing, as required by the Official Plan, staff recommended the inclusion of Condition No. 4. The Committee of Adjustment chose not to include the condition in the severance approval.

With respect to Condition No. 5, the applicant's agent argued against the condition on the grounds that in order to build the road outlined in the Neighbourhood Plan, it would require land from 6 different land owners, and would never get built as a result (see Appendix "F" - Page 2). It is staffs opinion that new road construction often requires land from multiple property owners in order to complete the road, and the necessary properties to build the road are assembled over time. When there is the potential for development off of a proposed road, as is the case with the 6 lots mentioned by the applicant, the likelihood of acquiring the necessary parcels, or a cooperative effort to construct the road, is increased. If the road was to be constructed, the 6 lots would have the potential to develop the rear of the properties into potentially 6 additional lots. Alternatively, if each of the 6 lots developed independently or if the lands were developed as a comprehensive development, then 9 lots could be created, based on the requirements of the "C" District. Given this development potential, it is not impossible to assemble the necessary lands to construct the road. In order to ensure that the proposed severance does not interfere with the planned development of the area, as laid out in the Neighbourhood Plan, staff recommended the inclusion of Condition No. 5.



**SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Severance Application HM/B-13:27, Louis Serafini, Fengate Capital Management Ltd. (Owner), 1400 Upper James Street (Hamilton) (PED13123) (Ward 8) - Page 17 of 18**

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The applicant's agent further outlined that they would accept Condition No. 5 on the understanding that if the road isn't required, that it be deeded back to the owner. Based on this, the Committee of Adjustment changed the wording of the variance to include, at the end of the condition, the following: "The lands shall be deeded back to the land owner if the City does not require the lands for road widening purpose." Staff does not have an issue with returning the lands to the land owner if the lands are not required for road widening purpose.

The removal of Conditions No. 3 and 4 is in the opinion of staff, inappropriate. It brings the proposed severance out of conformity with the criteria of Section 51(24) of the Planning Act, makes the proposed severance inconsistent with the policies of the Provincial Policy Statement, and brings the proposal out of conformity with the Hamilton-Wentworth Official Plan and City of Hamilton Official Plan. Based on this, staff appealed the decision of the Committee of Adjustment to delete Conditions No. 3 and 4 and staff recommends that the appeal proceed in order to ensure that the appropriate conditions are imposed on the severance.

**ALTERNATIVES FOR CONSIDERATION:**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

**Option 1:**

Council could proceed with the appeal and direct appropriate Legal Services and Planning staff to attend the OMB Hearing in opposition to the approved variance application, as recommended in this Report.

**Option 2:**

Council may direct staff to withdraw the appeal letter, which was filed by staff against the decision of the Committee of Adjustment, to the OMB.

**ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:**

**Strategic Priority #1:**

A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

**SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Severance Application HM/B-13:27, Louis Serafini, Fengate Capital Management Ltd. (Owner), 1400 Upper James Street (Hamilton) (PED13123) (Ward 8) - Page 18 of 18**

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**Strategic Objective:**

- 1.2 Continue to prioritize capital infrastructure projects to support managed growth and optimize community benefit.
- 1.4 Improve the City's transportation system to support multi-modal mobility and encourage inter-regional connections.
- 1.5 Support the development and implementation of neighbourhood and City-Wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

**Strategic Priority #2:**

Valued & Sustainable Services

*WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.*

**Strategic Objective:**

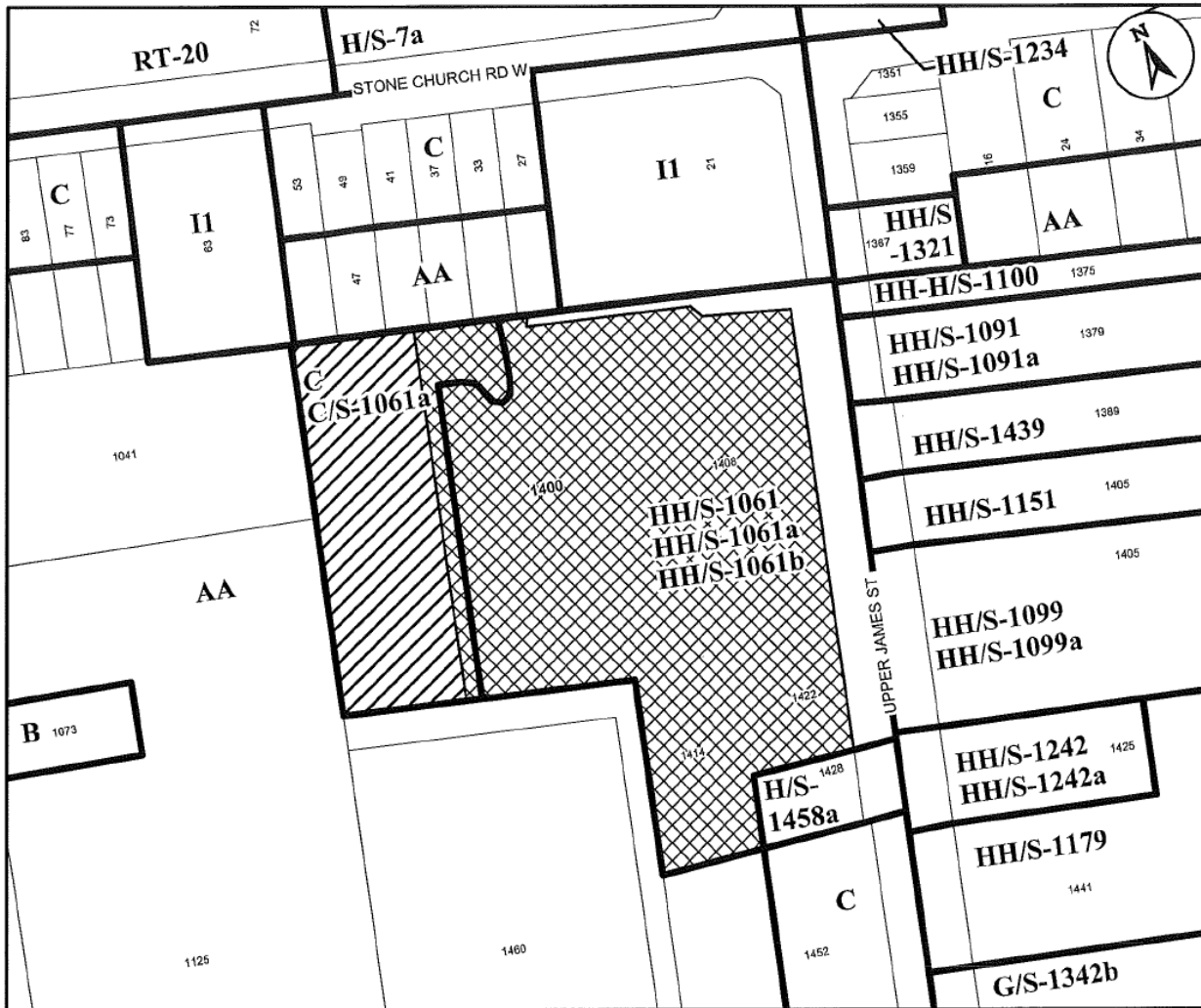
- 2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

<b>APPENDICES / SCHEDULES</b>
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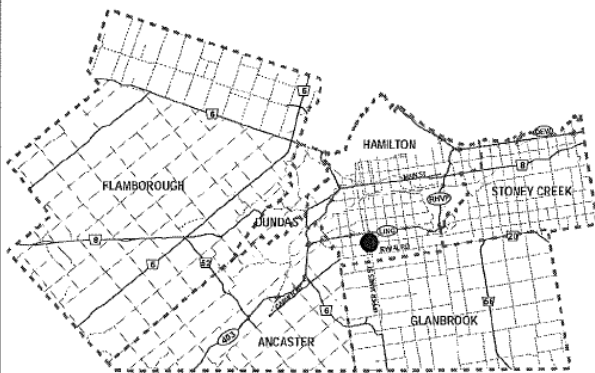
- Appendix "A": Location Map
- Appendix "B": Development Planning Comments
- Appendix "C": HM/B-13:27 Committee of Adjustment Decision
- Appendix "D": Required Conditions with Changes Illustrated
- Appendix "E": Severance Sketch
- Appendix "F": HM/B-13:27 May 2, 2013 Minutes

:DB

Attachs. (6)



● Site of the Application





**City of Hamilton**

## Committee of Adjustment

### Subject Property

1400 Upper James Street

-  Lands to be Conveyed
-  Lands to be Retained

File Name/Number:

HM/B-13:27

Date:

April 26, 2013

Technician:

DB

Map Not to Scale

Appendix "A"



Hamilton

May 2<sup>nd</sup>, 2013

HM/B-13:27 (1400 Upper James Street, Hamilton)

PLANNING and ECONOMIC DEVELOPMENT DEPARTMENT

Development Planning – West:

The applicant is proposing to sever the rear of the property at 1400 Upper James Street and add to the property at 1041 & 1125 West 5<sup>th</sup> Street for lands assembly purposes. The lands to be severed cannot be merged with two separate properties and can only be merged with 1 property. There are currently applications for Official Plan Amendment (OPA-12-024) and Zoning (ZAR-12-070) for the property at 1041 West 5<sup>th</sup> Street to permit a place of worship, retirement home, and medical facility and pharmacy. There are also applications for Rezoning (ZAR-12-067) and Subdivision (25T-201206) for the property at 1125 West 5<sup>th</sup> Street to establish 130 Townhouses on public and private roads.

Planning Act

Applications for severance must have regard to the criteria under section 51(24) of the Planning Act. These criteria include among others:

- a) The effect of development of the proposed subdivision on matters of provincial interest;
- b) Whether the proposed subdivision is premature or in the public interest;
- c) Whether the plan conforms to the Official Plan and adjacent plans of subdivision;
- e) The number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- f) The dimension and shape of the proposed lots;
- g) The restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- h) Conservation of natural resources and flood control;
- i) The adequacy of utilities and municipal services;

As the layout and design of the adjacent plan of subdivision has not been established staff cannot determine if the proposed severance conforms to adjacent plans of subdivision. The application is premature until the applicant identifies which property the lands to be severed are to be merged with, until the respected applications for Official Plan Amendment, Zoning, and/or Subdivision have adequately clarified how the proposal will maintain the intent of the neighbourhood plan with respect to future road access and serving, and other issues such as the establishment of a stormwater management pond have been adequately addressed. Based on the aforementioned issues, it is the opinion of staff that the proposed severance is premature and would not at this time, meet the criteria under section 51(24) of the Planning Act.

...../2

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Page 2

Provincial Policy Statement and Hamilton Wentworth Official Plan

The application is consistent with the Provincial Policy Statement and conforms to the Hamilton-Wentworth Official Plan.

Policy 1.1.1(c) outlines that healthy, liveable and safe communities are sustained by avoiding development and land use patterns which may cause environmental or public health and safety concerns. Further, Policy 3.2.2 states that contaminated sites shall be remediated as necessary prior to any activity of the site associated with the proposed use such that there will be no adverse effects. Staff note that the lands to be added to (1041 and 1125 West 5<sup>th</sup> Street) are subject to Planning Act applications for residential development. Accordingly, the subject application entails a change in land use from **Commercial** to **Residential**, which triggers a mandatory filing of a Record of Site Condition (RSC) under Ontario Regulation 153/04. As such, Staff require the submission of a RSC, as stated within condition No. 1 below.

City of Hamilton Official Plan

The subject property is designated "Residential" in the City of Hamilton Official Plan. Policy A.2.1.1 states "The primary uses permitted in the areas designated on Schedule "A" as Residential will be for dwellings. Various types of dwellings are included within this designation while preference will be given to the locating of similar densities of development together."

Policy A.2.1.8 states "It is the intent of Council that a variety of housing styles, types and densities be available in all Residential areas of the City, and further, that proposals for new development or redevelopment will contribute to the desired mix of housing where practicable. In this regard, Council will be guided by the Housing Policies of Subsection C.7 and the Neighbourhood Plan policies of Subsection D.2."

Policy C.7.3 states "Council will encourage a Residential Environment of an adequate physical condition that contains a variety of housing forms that will meet the needs of present and future residents. Accordingly, Council will:

- iii) Support Residential development such as infilling, redevelopment and the conversion of non-residential structures that makes more efficient use of the existing building stock and/or physical infrastructure that makes more efficient use of the existing building stock an/or physical infrastructure that recognizes and enhances the scale and character of the existing residential area by having regard to natural vegetation, lot frontages and areas, building height, coverage, mass, setbacks, privacy and overview;

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Page 3

Policy D.2.2 states "The detailed planning for the distribution and location of various land uses in each Planning Unit will be determined or reviewed through the preparation of Neighbourhood Plans. In this regard, Council will ensure that all new development and/or redevelopment complies with the provisions of this Plan and the Neighbourhood Plan. However, Council may permit a minor extension to or the intensification of an existing use or a use that is deemed temporary which does not meet the intent of the Neighbourhood Plan, provided that such a use is appropriately regulated in the Zoning By-law."

There are currently applications for Official Plan Amendment and Rezoning for the property at 1041 West 5<sup>th</sup> Street and a Rezoning and Subdivision for 1125 West 5<sup>th</sup> Street. The proposed severance is premature until it is clarified how the proposal will meet the intent of the Mewburn Neighbourhood plan with respect to future road access and services, and until the intended use of the lands has been clarified (singles/townhouse development, storm water management pond, etc.). In the absence of further clarification with respect to the planned development of the area, it is the opinion of staff that proposed severance is premature.

#### Mewburn Neighbourhood Plan

The subject lands are located within the Mewburn Neighbourhood Plan. The retained portion has been identified as Commercial and the severed portion has been identified as Single and Double Residential. The intent of application is to add the severed portion to adjoining lands known municipally as 1041 and 1125 West 5<sup>th</sup> Street. The following Neighbourhood Plan policy applies:

- 2.1 Measures will be taken to ensure that commercial uses will not unduly affect adjacent residential areas.

Staff note that there are ongoing discussions respecting the size and location of a Storm Water Management Pond on the proposed severed portion of the property and its impact on the road network within the Neighbourhood Plan.

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

- 1) 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;
- 2) Local knowledge associates areas with historic events/activities/occupations; and
- 3) Along historic transportation routes.

These criteria define the property as having archaeological potential. Staff required the completion of an archaeological assessment as part of FC-11-137.

...../4

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A Stage 1-2 archaeological report (PIF# P361-007-2012) has been submitted to the City of Hamilton and Ministry of Tourism, Culture and Sport. The report has yet to be accepted by the Ministry for compliance with licensing requirements, but has been reviewed by a Cultural Heritage Planner. As the approval authority, municipal planning staff concurs with the recommendations made in the report, and the municipal interest in archaeology has been met.

#### City of Hamilton Zoning By-law

The subject property is zoned Restricted Community Shopping and Commercial "HH/S-1061" District, and Urban Protected Residential "C" District in the City of Hamilton Zoning By-law, to which the proposed use complies.

Staff note that the applicant is proposing to merge the lands to be severed with two separate properties, as there is only 1 severed parcel, the lands cannot be merged with two separate properties but can only be merged with 1 property. The properties at 1041 & 1125 West 5<sup>th</sup> are both zoned Agricultural "AA" District, however, in the Hamilton Zoning By-law, properties with more than 1 District are reviewed against the least restrictive lot width and area requirements. If the lands to be severed are merged with either 1041 & 1125 West 5<sup>th</sup> Street, the severed lands would meet the minimum lot frontage requirement of 12m and the minimum lot area requirement of 360 sq. m. The lands to be retained will meet minimum lot frontage requirement of 12m and lot area requirement of 360 sq. m.

Staff note that there is currently a rezoning application (ZAC-12-070) being undertaken for the lands at 1041 West 5<sup>th</sup> Street for a range of uses including a place of worship, retirement home, medical and pharmacy uses, and there is also a rezoning application ZAC-12-067 for the property at 1125 West 5<sup>th</sup> Street for 130 Townhouse dwellings, neither of these uses would be permitted in the "C" District. It is the opinion of staff that the proposed severance is premature until it is clarified how the proposal will maintain the intent of the neighbourhood plan with respect to future road access and servicing, which property the lands to be severed will be merged with, and, the intended development pattern envisioned for both the lands to be severed and the lands to which they will be merged.

#### Recommendations:

It is the opinion of staff that the severance application is premature and should be **Tabled** until the Official Plan, Zoning, and Subdivision Applications for both 1041 & 1125 West 5<sup>th</sup> Street have proceeded in order to adequately clarify what the planned use of the lands will be, and the manner in which the lands will be serviced by roads and other infrastructure. In the absence of this clarification, it is the opinion of staff that the proposed severance does not conform to the criteria under section 51(24) of the Planning Act, and does not conform to the policies of the City of Hamilton Official Plan. Therefore if the applicant wishes to proceed with the application at this time staff recommends that the application be **Denied**.

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CONDITION (IF APPROVED):

1. That the owner/applicant shall submit a signed Record of Site Condition (RSC) to the City of Hamilton and the Ministry of the Environment (MOE). This RSC must be to the satisfaction of the City of Hamilton, including a notice of acknowledgement of the RSC by the MOE, and submission of the City of Hamilton's current RSC administration fee.

Building Services Division:

1. The lands to be conveyed shall be merged in title with the lands to which they are to be added.
2. Please be advised that a portion of this property is under Hamilton Conservation Management.

Development Engineering – West:

Information

1. There is an existing 375mm to 450mm dia, sanitary sewer on a sanitary easement, described as Part 3 on registered plan 62R-15255, in City favour over the subject lands, which continues easterly along the north property line to the existing 600mm sanitary sewer on Upper James Street.
2. There is an existing 1650mm storm sewer, along the north property line, on a storm, sanitary and watermain easement described as Part 2 on Registered Plan 62R-10651 in City favour over the subject lands.
3. For the information of the applicant, the current neighbourhood plan has identified a future municipal street over the severed and retained portion of the subject lands to provide for redevelopment of the back portion of the adjacent lands to the north as well to provide for servicing of the adjacent lands to the south.
4. There is an existing municipal walkway, identified as Part 1 on Registered Plan 62R-10651, adjacent to the north property line that ends at the future cul-de-sac bulb. The existing walkway is intended to provide connection to the future city parklands adjacent to the west side of West 5<sup>th</sup> Street.
5. For the information of the applicant, the City has completed the Mewburn Sheldon Neighbourhoods Class EA Study that identified need of a SWM Facility, to the east of West 5<sup>th</sup> Street, to support development of the lands to the west and south of the subject lands. The location and preliminary sizing of the future



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Page 6

centralized facility has been subject to the West Central Mountain Drainage Assessment, completed by AMEC in 2011, for the City. The future SWM facility should occupy the severed portion of the subject lands in accordance with the recommendations of the said study.

6. The location of the future centralized SWM Facility is in conflict with the road pattern as identified in the current neighbourhood plan and requires revision of the plan to address servicing of the adjacent lands to the north and south of the subject lands. Therefore, our recommendation is to have the subject application **tabled** until a revised neighbourhood plan is approved by the City to provide for an orderly development within the Neighbourhood.
7. For the information of the Committee, if our recommendation to have the subject application tabled is not supported, then as a condition of severance of the subject lands, the owner shall:
  - a) prepare a reference plan to establish a 12.0m wide servicing easement over the **retained** portion of subject lands in City favour to provide for servicing of the adjacent lands to the north and south of the subject lands; and
  - b) complete the necessary transfer deeds to dedicate to the City of Hamilton, a portion of the **retained** lands, for road widening purposes, that are within Part 4, on Registered Plan 62R-13606, including the lands needed to complete the future turning circle, in order to preserve the intend of the current Neighbourhood Plan;

all to the satisfaction of the Manager of Engineering Approvals Section.

**Hamilton Municipal Parking System (Parking Services):**

No comment.

**PUBLIC WORKS DEPARTMENT**

**Source Protection Planning:**

No comment.

**Traffic, Engineering and Operations Division:**

No comment.

**CORPORATE SERVICES:**

**Budgets, Taxation & Policy (outstanding taxes):**

The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.



Committee of Adjustment  
Hamilton City Hall  
71 Main Street West, 5<sup>th</sup> floor  
Hamilton, ON L8P 4Y5  
Telephone (905) 546-2424, ext. 4221  
Fax (905) 546-4202

**COMMITTEE OF ADJUSTMENT**  
**NOTICE OF DECISION**

**APPLICATION FOR CONSENT\LAND SEVERANCE**

**APPLICATION NO. HM/B-13:27**  
**SUBMISSION NO. B-27/13**

**IN THE MATTER OF** The Planning Act, R.S.O. 1990, Chapter P13, Section 53(1);

**AND IN THE MATTER OF** the Premises known as Municipal number 1400 Upper James Street, in the City of Hamilton;

**AND IN THE MATTER OF AN APPLICATION, AS AMENDED**, by the agent IBI Group (c/o Sergio Manchia) on behalf of the owner Fengate Capital Management Ltd. (c/o Louis Serafini), for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the conveyance of a vacant parcel of rear land measuring 51.0m± x 155.3m± to be added to an adjoining parcel (known municipally as 1125 West 5<sup>th</sup> Street), and to retain an irregular shaped parcel of land having a frontage of 189.14m± and an area of 30204.4m²± containing three existing buildings for commercial purposes.

**THE DECISION OF THE COMMITTEE IS:**

That the said application, as set out in paragraph three above, **IS APPROVED** for the following reasons:

1. The proposal does not offend the intent of the Hamilton-Wentworth and City of Hamilton Official Plans.
2. The Committee is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the lands.
3. The Committee considers the proposal to be in keeping with development in the area.

**Having regard to the matters under subsection 51(24) of the Planning Act, R.S.O. 1990, c.P. 13, the said application shall be subject to the following conditions.**

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar. The reference plan must be submitted in hard copy and also submitted in CAD format, drawn at true scale and location and tied to the City corporate coordinate system.
2. The lands to be conveyed shall be registered in the same name and title as the lands to which they are to be added.
3. The owner shall complete the necessary transfer deeds to dedicate to the City of Hamilton, a portion of the **retained** lands, for road widening purposes, that are within Part 4, on Registered Plan 62R-13606, including the lands needed to complete the future turning circle, in order to preserve the intent of the current Neighbourhood Plan, to the satisfaction of the Manager of Engineering Approvals Section. The lands shall be deeded back to the land owner if the City does not require the lands for road widening purposes.
4. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.

DATED AT HAMILTON this 2nd day of May, 2013.

HM/B-13:27  
Decision  
Page 2

\_\_\_\_\_  
M. Dudzic, Chairman

\_\_\_\_\_  
I. Dunlop

\_\_\_\_\_  
D. Serwatak

\_\_\_\_\_  
D. Smith

\_\_\_\_\_  
D. Drury

\_\_\_\_\_  
L. Gaddy

\_\_\_\_\_  
K. Audziss

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS May 9th, 2013.  
HEREIN NOTED CONDITIONS MUST BE MET WITHIN ONE (1) YEAR OF THE DATE OF THIS  
NOTICE OF DECISION (May 9th, 2014) OR THE APPLICATION SHALL BE DEEMED TO BE  
REFUSED (PLANNING ACT, SECTION 53(41)).

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL  
BOARD MAY BE FILED IS **May 29th, 2013.**

**NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.**

May 2<sup>nd</sup>, 2013

**CONSOLIDATION REPORT  
SEVERANCES**

The attached comments have been reviewed with regard to Committee of Adjustment Severance File HM/B-13:27 (1400 Upper James Street, Hamilton) and the following is submitted:

**Should the Committee grant the severance, an approval should be subject to the following conditions:**

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar. The reference plan must be submitted in hard copy and also submitted in CAD format, drawn at true scale and location and tied to the City corporate coordinate system.
2. The lands to be conveyed shall be registered in the same name and title as the lands to which they are to be added.

~~3.~~  
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by CoFA

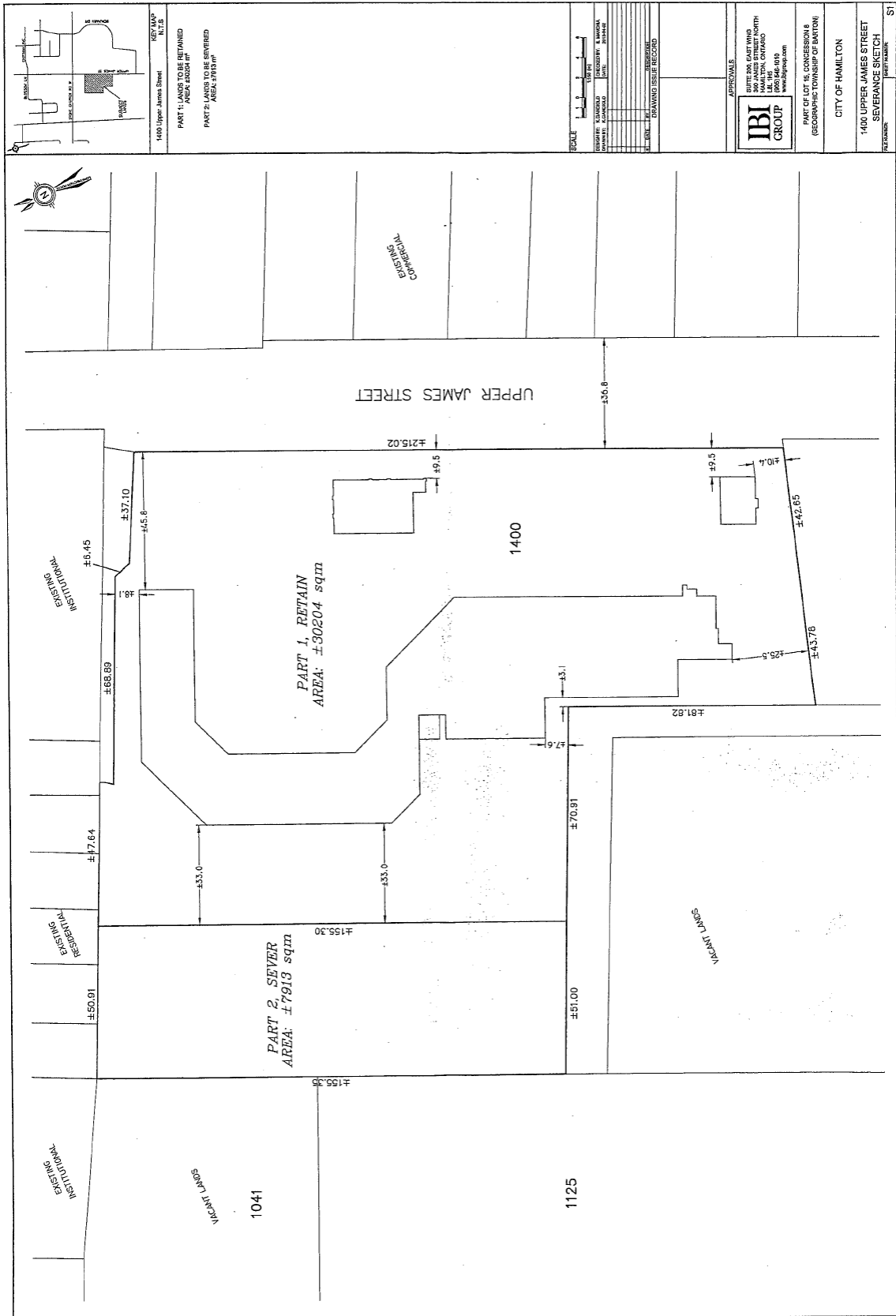
The owner/applicant shall submit a signed Record of Site Condition (RSC) to the City of Hamilton and the Ministry of the Environment (MOE). This RSC must be to the satisfaction of the City of Hamilton, including a notice of acknowledgement of the RSC by the MOE, and submission of the City of Hamilton's current RSC administration fee.

~~4.~~  
Deleted  
by CoFA

The owner shall prepare a reference plan to establish a 12.0m wide servicing easement over the **retained** portion of subject lands in City favour to provide for servicing of the adjacent lands to the north and south of the subject lands, to the satisfaction of the Manager of Engineering Approvals Section.

Change to  
wording

5. The owner shall complete the necessary transfer deeds to dedicate to the City of Hamilton, a portion of the **retained** lands, for road widening purposes, that are within Part 4, on Registered Plan 62R-13606, including the lands needed to complete the future turning circle, in order to preserve the intend of the current Neighbourhood Plan, to the satisfaction of the Manager of Engineering Approvals Section. *(The lands shall be deeded back to the land owner if the city does not require the lands for road widening purposes.)*
6. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.



May 2<sup>nd</sup>, 2013

HM/B-13:27

Fengate Capital Management Ltd. (c/o Louis Serafini)  
1400 Upper James Street, Hamilton

Appearances were:

Sergio Manchia, Agent on behalf of the applicant; Louis Serafini, Applicant. Interested parties were: Representative for the owner of 1041 West 5<sup>th</sup> Street; Allan Buist on behalf of DiCenzo who owns 1125 West 5<sup>th</sup> Street.

Those members present for the hearing of this application were: M. Dudzic (Chairman), V. Abraham, D. Drury, D. Serwatuk, L. Gaddy, D. Smith, I. Dunlop, K. Audziss.

A summary comment from the Planning and Economic Development Division together with comments from other departments and agencies were entered into the record.

Letters were entered into the record from: nil

Rep. for 1041 West  
5<sup>th</sup> Street

- generally we are in support with some concerns

S. Manchia

- this is simply a lot line adjacent for the transfer of a Storm Water Management Pond (SWMP) to facilitate the need for an overall SWM facility for the area
- this property was the former White Rose Plaza which has become so successful that it's become a problem
- it's a bit of a zoo
- handed out an aerial photo to the Committee (see attached)
- two years ago we initiated an option to purchase land to expand the parking as much as we can
- the pond is there as a result of a grade change and there is no way around it
- the size of the pond may increase as a result of the densities as determined by the Engineers
- approval of a subdivision to the South was granted two days ago and the City never said that was premature
- showed the new and old plan for the property (see attached)
- there is a few conditions he's going to challenge which will allow DiCenzo to move forward with development
- Fengate does not need the SWMP because they are not developers; what they need is parking
- currently there are four development applications in place right now, therefore, he doesn't believe this is premature

...../2

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Page 2

- used a large plan to show what was to occur
  - showed a plan of the future development
  - all the applications collectively require this pond except for the parking lot
  - there is no way we can do any type of development on that piece except for the parking and the pond
  - their only request is additional parking; if the pond size needs to be bigger it's not our party it's the adjacent developer
  - the report indicates that the SWM facility is in conflict with the road pattern; we've have meetings with staff and discussed that there is no need for the road
  - this does not make or break the severance
  - we don't believe that conditions 3, 4 or 5 apply here because there are four other development applications in the works for this site
  - the zoning application will flush out that the road is not warranted
  - if the road was to be built you would have to have six different land owners come together; it isn't going to happen
  - with regard to condition #4 there is already an existing easement because of a sewer extension; we could live with this condition but it's not correct
  - with regard to condition #3 he has never seen this condition when lands are being transferred between private land owners
- C. Thomas  
(staff)
- there are a number of applications in the works
  - one of the applications is for Fengate to expand their commercial piece for more parking
  - he thinks things can move forward when staff sees how the roads are going to work
  - the OP speaks to the neighbourhood plan so staff needs to see a better alternative
- D. Barnett  
(staff)
- he has concerns because the application says the conveyance is going to two different properties
  - you can't sever a property to be added to two different properties in one application
- S. Manchia
- it should only be for 1125 West 5<sup>th</sup>
- D. Barnett  
(staff)
- staff also has concerns with servicing
  - this needs to be done in a comprehensive manner

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Page 3

- S. Robichaud  
Manager of Development  
Planning
- this is more than just a simple lot line adjustment
  - it's beyond that sort of scope
  - there have been meetings but Council has not made any determination on the zoning or the other applications
  - we need more time to work with the land owners
  - we need to protect the City's rights
  - it's very complicated
- C. Thomas  
(staff)
- there is also an application in for 1041 West 5<sup>th</sup>
- S. Manchia
- if in fact the easements are needed we would accept that
  - we would also accept condition #5 on the condition that if the road isn't required that it be turned back to us with regard to Development Engineering and the road servicing, things are covered
  - two days ago he sat at a meeting for development of the lands to the South and staff did not say that that development was premature
- K. Audziss  
(Committee Member)
- this is why people don't look at Hamilton because of this type of nonsense
  - he doesn't see how most of the sections in 51(24) apply here
  - the City is standing in the way needlessly
- V. Abraham  
(Committee Member)
- we don't know all of the facts
  - staff is asking for more time
- S. Manchia
- we've been waiting for 1½ years
- V. Abraham  
(Committee Member)
- we don't have staffs recommendation
- S. Manchia
- there are qualifiers in here if a decision is made
  - we would like a decision today whether it's an approval or denial
- A. Buist
- he supports the application
  - his client has owned the property for a long time
  - there was a large study done and all the land owners worked co-operatively and identified this space for the SWMP



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Page 4

- this went to the City and there were no red flags
  - everything was submitted to the City in March and then we were presented with two different concept plans (see attached) and an indication that they need more space for the SWMP
  - there was no suggestion that the SWMP will travel further on to Fengate's property
  - staff feel this is premature because they can't be sure if this complies with adjacent plans of subdivision; there are no plans of adjacent subdivisions; all the plans are here
  - these issues go back to 2007
  - we appreciate the applicants' position and hope we can just go forward
  - the zoning and draft plan application approvals will allow the City another kick at the can
  - he supports Fengate's application
  - we know the road parcel is going to the City; whether it's for a road or a pond it makes no difference to us
  - our zoning and draft plan applications will make sure things fit together
  - you can see the underlining road pattern which is completely obliterated in the neighbourhood plan
- V. Abraham  
(Committee Member) - he's totally confused
- S. Robichaud  
Manager of Development  
Planning - he's talking about the property to the North
- V. Abraham  
(Committee Member) - questioned how the severance is going to affect things
- S. Robichaud  
Manager of Development  
Planning - there is supposed to be a future road to allow for the re-development of these properties  
- under normal conditions of approval we would be asking for a road dedication  
- we also need to look at whether there are any easements that have to be re-located
- S. Manchia - he's okay with the condition subject to a condition that if the road doesn't get built it reverts back to the owner
- A. Buist - ultimately it's going to be City owned lands

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- we are not under the illusion that the lands are for anything other than for a SWMP
- S. Robichaud  
Manager of Development  
Planning - he suggests a two week deferral to work out the wording of the conditions so no one has to appeal the wording
- I. Dunlop  
(Committee Member) - questioned if Mr. Robichaud is satisfied with the conditions as they are today
- S. Robichaud  
Manager of Development  
Planning - he would like to look at the conditions again because one is being asked to be deleted  
- he would also like the opportunity to see if any conditions need to be added
- I. Dunlop  
(Committee Member) - he is almost fully satisfied but is leaning towards a two week deferral as requested by staff  
- he feels it would also benefit the Committee because this is a really difficult application
- S. Manchia - if this is deferred to look at the conditions it will come back with much more onerous conditions from Engineering staff  
- he will not stand for that; he wants a decision today  
- we've agreed to condition #5 as long as there is a clause that says the lands will be deeded back to the land owner if the City does not require the lands for road widening purposes

Following discussion it was moved by Mr. Audziss and seconded by Mr. Drury that the consent requested be **APPROVED** for the following reasons:

1. The proposal does not offend the intent of the Hamilton-Wentworth and City of Hamilton Official Plans.
2. The Committee is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the lands.
3. The Committee considers the proposal to be in keeping with development in the area.

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The application shall be subject to the conditions as noted in the summary comment of the Planning and Economic Development Department subject to the following changes:

- conditions 3 and 4 shall be deleted
- condition 5 shall have the following sentence added:  
"The lands shall be deeded back to the land owner if the City does not require the lands for road widening purposes."

**CARRIED.**

Mr. Abraham voted in opposition to the motion to approve the application because he would have preferred the two week deferral as requested by staff.