SUBJECT: Committee of Adjustment (Urban) Consent/Land Severance Application SC/B-05:146, for Property Known as Part 2, Plan 62R-7533 (Lands West of 10 Azalea Court), Former City of Stoney Creek - Supported by the Planning and Economic Development Department (PED05179) (Ward 9)

RECOMMENDATION:

That Report PED05179 respecting Committee of Adjustment Application (Urban) Consent/Land Severance Application SC/B-05:146, Part 2, Plan 62R-7533 (lands west of 10 Azalea Court), Former City of Stoney Creek, as shown on Appendix ‘A’ to Report PED05179, denied by the Committee but supported by the Planning and Economic Development Department, be received for information.

EXECUTIVE SUMMARY:

A proposed severance to create two parcels of land for residential purposes from a vacant property was considered by the Committee of Adjustment (Urban) on August 10, 2005. Comments to the Committee from staff supported the severance, as the proposal had received approval of a Niagara Escarpment Commission Development Permit, was consistent with the Provincial Policy Statement and was in conformity with the policies of the Hamilton-Wentworth Official Plan and the Stoney Creek Official Plan.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department
The application was tabled until August 24, 2005 to allow the Committee to conduct a site visit. The Committee, subsequently, denied the application (see Appendix “C”).

The Committee’s decision to deny the application was appealed to the Ontario Municipal Board by the owners of the land. To date, an Ontario Municipal Board Hearing has not been scheduled.

**BACKGROUND:**

**Roles and Responsibilities of the Committee of Adjustment (PD02116(a))**

In December 2002, City Council endorsed a staff report related to the roles and responsibilities of the Committee of Adjustment. The recommendations included the following:

“That the Planning and Development Department be authorized and directed to prepare an Information Report to the Committee of the Whole whenever an appeal is made to the Ontario Municipal Board, of a decision made by the Committee of Adjustment to deny an application(s) that was supported by staff. In response to such a report, Council may determine its position on the Committee of Adjustment decision and may instruct Legal Services to attend the Ontario Municipal Board Hearing, in support of the Committee’s decision, and to retain outside professional(s) accordingly.”

**Proposal**

The subject lands were successfully severed from abutting lands to the east, known municipally as 10 Azalea Court, under Consent/Land Severance Application S-35-85, which was approved on July 2, 1985. The approval was subject to the owner receiving a Development Permit from the Niagara Escarpment Commission (NEC). Development Permit No. 2407/W/R/84-85/256 was issued for the newly created lot on June 17, 1986.

The subject property is located within the “Urban Area” of the Niagara Escarpment Plan (NEP). While the remaining properties on Azalea Court and other lots in the subdivision were removed from Development Control, the subject lands remain regulated by the Niagara Escarpment Commission due to its close proximity to the Escarpment Brow. Development Permit Application W/R/04-05/18 was approved on August 4, 2005, on the basis that the proposal represents an efficient use of urban land and does not compromise the objectives of the NEP. The development permit was not appealed.

The current application (SC/B-05:146), to further divide the subject lands into two single family residential building lots, was originally considered by the Committee of Adjustment (Urban) on August 10, 2005. Staff supported the requested consent/land severance application, as it was consistent with the Provincial Policy Statement and conformed to the Hamilton-Wentworth Official Plan and Stoney Creek Official Plan. A location map of the subject lands is attached as Appendix “A”.
As the subject lands are still within the NEC Development Control Area, the City's Zoning By-law is not in force, however, the underlying zoning provisions are used to evaluate Development Permit applications. As a result, staff supported the application based on the increased lot area of the proposed lots and the minor reduction to the lot frontage normally required in the underlying zoning. The proposed lots are shown on Appendix “B”.

The application was tabled until August 24, 2005, to allow the Committee to conduct a site visit. The decision of the Committee of Adjustment to deny the application is attached as Appendix “C”.

**ANALYSIS/RATIONALE:**

Development Permit Application W/R/04-05/18 was approved on August 4, 2005, which was supported by staff based on the increased lot area of the proposed lots and the minor reduction to the lot frontage normally required in the underlying “Single Residential “R2” Zone.

Subsequently, staff supported consent/land severance application SC/B-05:146, as it was consistent with the Provincial Policy Statement, conformed to the Hamilton-Wentworth Official Plan and Stoney Creek Official Plan, and was considered to be compatible with existing residential development in the surrounding area.

**ALTERNATIVES FOR CONSIDERATION:**

**Option 1**

Council may instruct Legal Services to attend the Ontario Municipal Board Hearing in support of the Committee of Adjustment decision, and to retain outside professional(s).

**Option 2**

Council may decide to support the applicant’s appeal against the Committee of Adjustment’s decision to refuse, and direct Legal Services to attend the Ontario Municipal Board Hearing in support of the application and to use City Planning staff as its professional witness.

**Option 3**

Council may decide to not send Legal Services to the Ontario Municipal Board, either in support of the Committee’s decision or against the decision.
SUBJECT: Committee of Adjustment (Urban) Consent/Land Severance Application SC/B-05:146, for Property Known as Part 2, Plan 62R-7533 (Lands West of 10 Azalea Court), Former City of Stoney Creek - Supported by the Planning and Economic Development Department (PED05179) (Ward 9) - Page 4 of 6

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: Planning and Economic Development Department staff supported the subject application and the rezoning application that was approved by Council. However, if Council wishes to support the Committee denial, the City must seek out an outside planning consultant who can professionally support the denial. If retained, the cost of hiring the planner for the Hearing is estimated at $2,500 to $5,000. In addition, one lawyer from Legal Services would be required for preparation and attendance at the Hearing. These costs are covered by the respective Departmental Work Programs/Budgets. Therefore, no additional funds would be required.

Staffing: One representative from Legal Services would be required for preparation and attendance at the Ontario Municipal Board Hearing.

Legal: No legal implications are expected.

POLICIES AFFECTING PROPOSAL:

• Provincial Policy Statement (PPS)

The application is consistent with the Policies of the PPS.

• Niagara Escarpment Plan (NEP)

The subject property is located within the “Urban Area” of the NEP. Although the property was removed from Development Control, it remains regulated by the Niagara Escarpment Commission due to its close proximity to the Escarpment. Development Permit Application W/R/04-05/18 was approved on August 4, 2005 on the basis that the proposal represents an efficient use of urban land and does not compromise the objectives of the NEP.

• Hamilton-Wentworth Official Plan

The subject property is designated “Urban Area” and the proposal complies with the Hamilton-Wentworth Official Plan.

• Stoney Creek Official Plan

The property is designated “Residential”.

Subsection A.1.2.1 states: “The primary uses permitted in areas designated on Schedule "A" as RESIDENTIAL shall be for dwellings. The location and type of residential densities within these areas, however, shall conform to the relevant
Secondary Plan provisions, as specified under this Subsection, Subsection A.13, F.3 and other relevant policies of this Plan."

Subsection A.1.2.20 states: “In the development of new residential areas and as far as practical in the infilling or redevelopment of established areas, Council may undertake or require the following in order to achieve high standards of residential amenity:

a) Provision and maintenance of adequate off-street parking.

b) Provision, improvement and/or maintenance of on-site landscaping.

c) The provision and maintenance of adequate separation distances and the placement of buffering features between residential uses of differing densities as well as other land uses.

In addition, residential development and/or infilling within developed neighbourhoods shall not be on a scale so as to create a land use conflict with surrounding uses.”

Subsection C.1.1 states: “Severances within the City will be given consideration only if the applicant demonstrates that his application for consent is warranted and in conformity with the following provisions:

a) Consents shall only be permitted where the application complies with the policies of this Plan, the Regional Official Plan, the Niagara Escarpment Plan, where the lands are located within the Escarpment Natural, Escarpment Protection or Escarpment Rural Area as shown on Schedule "B", and the requirements of the Planning Act. Prior to the issuance of the Land Division Committee's certificate, the consent must conform with the appropriate Zoning By-law, where applicable.

b) Access to Provincial Highways and Regional Roads must conform with access requirements of the Provincial Ministry of Transportation and Communications and the Regional Access By-law.

c) Any lot created shall have direct frontage on a public road of an acceptable standard of construction.

d) Consent for a severance shall not create a traffic hazard.

e) The applicant must prove to the appropriate authority that a sufficient potable ground water supply is available for the intended use of the land prior to the endorsement of the deed by the Secretary of the Land Division Committee.

f) Consent for severances shall be discouraged in woodlots.
g) Extensions to linear or ribbon development along roadways are to be discouraged.

The application conforms to the Stoney Creek Official Plan.

**RELEVANT CONSULTATION:**

- Legal Services Division

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

**Community Well-Being is enhanced.** ☑ Yes  ☐ No
The public are involved in the definition and development of local solutions.

**Environmental Well-Being is enhanced.** ☑ Yes  ☐ No
Ecological function and the natural heritage system are protected.

**Economic Well-Being is enhanced.** ☑ Yes  ☐ No
Investment in Hamilton is enhanced and supported.

**Does the option you are recommending create value across all three bottom lines?**
☑ Yes  ☐ No

**Do the options you are recommending make Hamilton a City of choice for high performance public servants?**
☐ Yes  ☑ No

:JG
Attachs. (3)
Appendix "C" to Report PED05179 (Page 1 of 1)

COMMITTEE OF ADJUSTMENT

NOTICE OF DECISION

APPLICATION FOR CONSENT LAND SEVERANCE

APPLICATION NO. SC/B-05:146
SUBMISSION NO. B-146/05

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 10 Azalea Court, formerly in the City of Stoney Creek, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the agent Planning and Engineering Initiatives Ltd. on behalf of the owner 967729 Ontario Inc. (Paul Bailey), for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the conveyance of an irregular shaped vacant parcel of land having an area of 1,281.77m² for single family residential purposes, and to retain an irregular shaped parcel of land having an area of 2,430.08m² containing an existing single family dwelling for residential purposes.

THE DECISION OF THE COMMITTEE IS:

That the said application IS DENIED for the following reasons:

1. The proposal does not appear to be in the interest of proper planning and development for the area.

2. The proposal does not comply with Section 51(24) of The Planning Act.

3. The Committee, after viewing the property, is of the opinion that if two homes are constructed on the proposed lots, the character of the existing neighbourhood would not be maintained.

DATED AT HAMILTON this 24th day of August, 2005.

D. Drury, Acting Chairman

V. Abraham

C. Lewis

D. DeLillo

R. Nair

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS August 31st, 2005.

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS September 20th, 2005.

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