SUBJECT: Appeal of the City of Hamilton Committee of Adjustment (Rural) Decision to Approve Severance Application AN/B-06:08 Loewith and Howe (Owners), 1736 Powerline Road West (Former Town of Ancaster) (PED06126) (Ward 14)

RECOMMENDATION:

That Council agree to the following actions, as detailed in Report PED06126, respecting the appeal of the City of Hamilton Committee of Adjustment (Rural) Consent/Land Severance Application AN/B-06:08 (Loewith & Howe), 1736 Powerline Road West, former Town of Ancaster, as shown on Appendix “A” to PED06126, approved by the Committee of Adjustment (Rural) 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 Municipal Board (OMB) against the decision of the Committee of Adjustment (Rural) to approve application AN/B:06-08.

(b) That Council direct appropriate Legal Services and Planning staff to attend the future Ontario Municipal Board (OMB) Hearing.

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Lee Ann Coveyduck
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

Application AN/B-06:08 was considered by the City of Hamilton Committee of Adjustment (Rural) on February 22, 2006. Comments to the Committee of Adjustment from the Planning and Economic Development Department did not support the
application as it was the opinion of staff that the proposal did not conform with the severance policies as set out in the Greenbelt Plan, the Provincial Policy Statement, the Hamilton-Wentworth Official Plan and the Ancaster Official Plan. The Committee of Adjustment approved the application, subject to conditions on February 22, 2006. Planning and Economic Development staff has submitted an appeal letter and the required fee to the Secretary-Treasurer of the Committee of Adjustment to initiate the appeal process.

**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 when 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.”

The situation with the subject Powerline Road application is one in which the Committee of Adjustment “approved” an application that was “not” supported by staff. What is consistent between the above resolution and the subject application is that the Committee of Adjustment decided against the staff recommendation. As a result, the above application is being brought to the attention of Council for their consideration and direction.

Due to the short appeal time frame regulated through the Planning Act, the prescribed fee and appeal letter were submitted to begin the appeal process, subject to confirmation of this direction from Council.

**Proposal**

The subject property is located at 1736 Powerline Road (former Town of Ancaster). The application proposes to convey a vacant parcel of land having a frontage of 131.2 metres (430.5’) and an area of 10.26 hectares (25.4 acres) to be added to the lands to the east known municipally as 1650 Powerline Road West (Verhey) for agricultural purposes, and to retain a parcel of land having a frontage of 263.19 metres (863.5’) and an area of 22.23 hectares (54.9 acres) containing an existing single family dwelling and four farm buildings for agricultural purposes. The proposal was supported by a letter dated January 18, 2006, from Mr. Loewith and Mrs. Howe, and by a “Farm Layout and Feasibility Study” prepared by Mr. Verhey, who is the owner of the lands at 1650
Powerline Road West to which the severed lands are to be added. The study shows the lands to be used for a nursery stock operation, starting with 1-2 acres in production for the first year, and adding 1 acre into production every year after.

The application was reviewed against all applicable planning policy documents which included the Greenbelt Plan, Provincial Policy Statement, Hamilton-Wentworth Official Plan, and the Ancaster Official Plan. Planning and Economic Development Department staff recommended denial of the application on the basis of non-conformity with these policy documents.

The Committee of Adjustment (Rural) approved the application on February 22, 2006, subject to conditions (Appendix “B”). The application was approved based on the following:

1. The Committee, having regard to the evidence, is satisfied that the proposal will not prejudice the existing and/or potential viability of the farm unit on the proposed retained and conveyed lands.

2. The Committee, recognizing the long term commitment to agriculture in the Region by both Mr. Verhey (proposed purchaser) and the Loewith’s, is satisfied that both parcels will remain in agricultural production.

3. The Committee is of the opinion that this is a minor lot adjustment as no new building lot is being created.

4. The Committee considers the proposal to be in keeping with the development in the area.

5. The Committee is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the lands.

**ANALYSIS/RATIONALE:**

Staff recommended denial of the application based on conflicts with the following Provincial legislation and land use planning policies.

1. The Provincial Legislative Assembly granted Royal Ascent to Bill 135, the **Greenbelt Act**, on February 24, 2005. Through Section 3 of the **Greenbelt Act**, the Greenbelt Plan was established. The Greenbelt Plan policies are to be applied to any application received on or after December 16, 2004. Application AN/B-06:08, received after this date, is required to conform with the policies of the Plan. As well, the Act states that:

   “8. (1) Despite any other Act, the Greenbelt Act prevails in the case of a conflict between the Greenbelt Plan and,
(a) an official plan,
(b) a Zoning By-law; or
(c) a policy statement issued under section 3 of the Planning Act”

Therefore, in the review of the application, the Greenbelt Plan policies are to be given the highest level of consideration. Should an application fail to conform with the policies of the Greenbelt Plan, the application should be denied, regardless of more permissive planning policies contained within the lower tier documents (i.e. Official Plans and Zoning By-laws).

Section 4.6 of the Greenbelt Plan outlines the limited lot creation policies which complement the overall goal of Agricultural Protection. To enhance urban and rural areas, and overall quality of life, the Greenbelt Plan promotes the following matters within the “Protected Countryside” designation where the site is located:

- Protecting prime agricultural areas by preventing further fragmentation and loss of the agricultural land base caused by lot creation and the redesignation of prime agricultural lands.
- Provision of the appropriate flexibility to allow for agriculture, agriculture-related and secondary uses, normal farm practices and an evolving agricultural/rural economy.
- Increased certainty for the agricultural sector to foster long-term investment in, improvement to, and management of land.

Within the Protected Countryside, lot creation is permitted for:

“4.6.2(c) Minor lot adjustments or boundary additions, provided they do not create a separate lot for a residential dwelling in specialty crop or prime agricultural areas and there is no increased fragmentation of a key natural heritage feature or key hydrologic feature.”

The addition of 25.4 acres (severed lands) to an existing 1.03 acre residential parcel (1650 Powerline Road West) cannot be considered minor. The additional lands are intended to transform the parcel from residential to agricultural. It is not the intent of the minor lot adjustment or boundary addition policies to transform the use of a property. Typically, minor lot adjustments or boundary additions are a tool available to property owners looking to correct surveying errors (i.e. fences built on a neighbouring property) or to add lands to an existing parcel that will create a lot in harmony with the parcel fabric of the area. It is not appropriate to use these policies that allow for minor lot adjustments or boundary additions to attempt to create a new agricultural parcel.
As per Section 3.1.1 of the Greenbelt Plan, it is the role of the municipal planning documents to define prime agricultural lands. The Hamilton-Wentworth Official Plan designates the subject lands as Prime Agricultural Lands.

As it is clearly the intent of Mr. Verhey to establish a new agricultural use, Policy 4.6.3(a) of the Greenbelt Plan is the correct policy to review the application against.

Within the specialty crop and prime agricultural areas, lot creation is permitted for:

“4.6.3(a) Agricultural uses where the severed and retained lots are intended for agricultural uses and provided the minimum lot size is 40 acres within specialty crop areas and 100 acres within prime agricultural areas.”

Approval of the application will have the effect of creating a new undersized agricultural parcel, and further reduce an existing undersized parcel. It is not the goal of the Greenbelt Plan to allow for fragmentation and the creation of undersized agricultural parcels or hobby farms.

Currently, the existing parcel is 32.49 hectares (80.3 acres), which is below the minimum size of 100 acres in a Prime Agricultural Area required for new agricultural parcels in the Plan. The Greenbelt Plan recognizes legally existing uses and there is no issue with respect to the existing parcel.

2. Notwithstanding that the Provincial Policy Statement (PPS) is not the most senior planning document applicable, the principles and policies that are outlined in it support the Greenbelt Plan policies. Policy 2.3.4.1(a) of the PPS states that lot creation in Prime Agricultural Areas may be permitted for agricultural uses provided that the lots are of a size appropriate for the types of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations. The principles of appropriate lot size and flexibility are clear themes in both planning documents which support the appropriateness of the minimum lot size requirement within the Greenbelt Plan.

3. The opportunity still exists for a new agricultural operation to begin, however, not on a separate parcel. The proposed severed lands could be rented from the Loewith’s/Howe’s property which, in turn, would create greater financial security for the Loewith/Howe family who are an established farming family.

4. There is no long-term farming history or knowledge outlined in the Verhey proposal and it is unclear when the operation would begin, and who exactly will be running the day-to-day farming operation. It is not appropriate to create a farm parcel when there is no clear or established farm operator. The option
outlined in Comment 3 above would appear ideal for a person or family looking to enter the farming industry.

5. The approval of the application could have potential impacts throughout all the Prime Agricultural Lands within the City of Hamilton. The above application could set a precedent for future similar applications for the creation of agricultural parcels that are not in conformity with the Greenbelt Plan.

**ALTERNATIVES FOR CONSIDERATION:**

**Option 1**

Council could proceed with the appeal and direct appropriate Legal Services and Planning staff to attend the Ontario Municipal Board Hearing in opposition to the approved severance 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 (Rural) to the Ontario Municipal Board (OMB).

The City of Hamilton was the only party which appealed the application. Should the appeal be withdrawn, the application will be considered approved, subject to conditions, with no other options for appeal.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial: Planning and Economic Development 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. Therefore, no additional funds would be required.

Staffing: One representative from each of Development Planning and Legal Services would be required for preparation and attendance at an Ontario Municipal Board Hearing.

Legal: No legal implications are expected.

**POLICIES AFFECTING PROPOSAL:**

**Greenbelt Plan**

The subject lands are designated as “Protected Countryside” within the Greenbelt Plan. Policy 4.6.2(c) of the Greenbelt Plan allows for minor lot adjustments or boundary
additions. As the application is proposing the addition of 25.4 acres in an effort to establish a new farming operation, the application is not considered minor and, therefore, does not conform with the Greenbelt Plan.

The application should be reviewed against Policy 4.6.3(a) of the Greenbelt Plan, which allows for the creation of new agricultural parcels within the Prime Agricultural areas provided they are a minimum size of 100 acres. Approval of this application would create two parcels (26.4 acres and 54.9 acres) that are well below the minimum 100 acre standard, as the current property at 1736 Powerline Road West is approximately 80.3 acres.

**Provincial Policy Statement**

Policy 2.3.4.1(a) of the Provincial Policy Statement (PPS) states that:

“lot creation in prime agricultural areas is only permitted for agricultural uses, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations.”

This Policy further supports the minimum parcel size of 100 acres for new agricultural uses within Prime Agricultural areas as set out in the Greenbelt Plan. Once again, this application would create two parcels, approximately 54.9 acres (Loewith & Howe lands) and 26.4 acres (Verhey lands) respectively, that are well below the minimum 100 acre standard and, therefore, is not consistent with the policies of the PPS.

**Hamilton-Wentworth Official Plan**

The subject property is designated as “Prime Agricultural Lands” within the Hamilton-Wentworth Official Plan. Policy 4.2.5 of the Hamilton-Wentworth Official Plan allows for the creation of smaller farm units where both the severed and retained lands are viable (i.e. 45 acres or smaller for specialized operations). Notwithstanding the intent of 4.2.5, staff must be satisfied that the specialized operation is considered viable, as defined in the Hamilton-Wentworth Official Plan. However, as the Greenbelt Plan is paramount, the application must conform to the policies set out within it, such as the higher standard for minimum parcel size for agricultural lands. Where there is a conflict, and the Hamilton-Wentworth Official Plan does not conform to the Greenbelt Plan, the Greenbelt Plan prevails as it is the more restrictive policy document.

**Ancaster Official Plan**

The subject lands are designated “Agriculture” on Schedule ‘A’, Rural Area Land Use Plan of the Ancaster Official Plan. In this regard, Policy 7.7.2.1 of Subsection 7.7.2 (Agricultural Area Severance Policies) outlines specific criteria for land severances within lands designated “Agriculture”. Policy 7.7.2.1 (i)(a) states:
Any proposal for consent within the Agricultural Area shall:

(a) not prejudice the existing and/or potential viability of a farm unit; not interfere with the efficient agricultural operation of remaining lands or adjacent agricultural lands…”

Staff is of the opinion that the proposal will prejudice the existing and/or potential viability of the farm unit on the proposed retained and conveyed lands and, as such, the proposal does not conform to the Ancaster Official Plan.

Ancaster Zoning By-law No. 87-57

The subject lands are zoned as Agricultural “A” Zone in the Ancaster Zoning By-law No. 87-57. The proposed lands to be retained, and lands to be conveyed and added to 1650 Powerline Road West, meet the minimum lot frontage and lot area requirements of the By-law.

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
Further farm fragmentation and potential land use conflicts are introduced in to the agricultural area.

Environmental Well-Being is enhanced. □ Yes ☑ No
Potential impacts to soil and groundwater resources.

Economic Well-Being is enhanced. □ Yes ☑ No
The application impacts the flexibility of the existing parcel to expand and or establish new agricultural operations on a suitably sized parcel.

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

:SD
Attachs. (2)
Appendix "A" to Report PED06126

Site of the Application

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

Committee of Adjustment

Subject Property
1736 Powerline Road West
- Lands to be Retained
- Lands to be Severed and added to 1650 Powerline Road West

Hamilton

Filename/number: AN/A-06:08
Date: February 15, 2006
Technician: SD
Map Not to Scale
Appendix "A"
COMMITTEE OF ADJUSTMENT
NOTICE OF DECISION

APPLICATION FOR CONSENT\LAND SEVERANCE

APPLICATION NO. AN/B-06:08
SUBMISSION NO. B-08/06

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 1736 Powerline Road West, formerly in the Town of Ancaster, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the owners Ben Loewith and Jennifer Howe, 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 land having a frontage of 131.2m± (430.5'±), and an area of 10.26 hectares± (25.4 acres±) to be added to the lands to the east known municipally as 1650 Powerline Road West for agricultural purposes, and to retain a parcel of land having a frontage of 263.19m± (863.5'±), and an area of 22.23 hectares± (54.9 acres±) containing an existing single family dwelling and four farm outbuildings for agricultural purposes.

THE DECISION OF THE COMMITTEE IS:

That the said application IS APPROVED for the following reasons:

1. The Committee, having regard to the evidence, is satisfied that the proposal will not prejudice the existing and/or potential viability of the farm unit on the proposed retained and conveyed lands.

2. The Committee, recognizing the long term commitment to agriculture in this Region by both Mr. Verhey (proposed purchaser) and the Loewith's, is satisfied that both parcels will remain in agricultural production.

3. The Committee is of the opinion that this is a minor lot adjustment as no new building lot is being created.

4. The Committee considers the proposal to be in keeping with development in the area.

5. The Committee is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the lands.
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.

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. Submit proof that the existing dwelling and any accessory buildings conform to the requirements of the Zoning By-law. If the building(s) do not conform, the applicant shall receive final approval of any variances from the requirements of the Zoning By-Law as determined necessary by the Planning and Economic Development Department (Building & Licensing Division).

DATED AT HAMILTON this 22nd day of February, 2006.

__________________________________________
F. Carrocci, Chairman

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L. Tew                                           F. Jewell

__________________________________________
L. Gaddye                                         D. Smith

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS March 1st, 2006. HEREIN NOTED CONDITIONS MUST BE MET WITHIN ONE (1) YEAR OF THE DATE OF THIS NOTICE OF DECISION (March 1st, 2007) 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 **March 21st, 2006**.

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