TO: Chair and Members  
Economic Development and Planning Committee

WARD(S) AFFECTED: Ward 15

COMMITTEE DATE: October 5, 2010

SUBJECT/REPORT NO: Application to Amend Town of Flamborough Official Plan and Zoning By-law No. 90-145-Z for the Property Located at 533 Millgrove Side Road (Flamborough) (PED10237) (Ward 15)

SUBMITTED BY: Tim McCabe  
General Manager  
Planning and Economic Development Department

PREPARED BY: Chris Bell (905) 546-2424, Ext.1262

SIGNATURE:

RECOMMENDATION:

(a) That **Official Plan Amendment Application OPA-10-011, by Domson Investments Ltd., Owner**, for a site-specific designation to permit “agri-tourism” uses, including a tea room, gift shop and entertainment uses on the subject lands, as shown on Appendix “A” to Report PED10237, **be denied** for the following reasons:

(i) That the proposal does not conform to the Hamilton-Wentworth Regional Official Plan and the Greenbelt Plan, and is not consistent with the Provincial Policy Statement.

(ii) That approval of the application would encourage other similar applications which, if approved, would undermine the intent of the Hamilton-Wentworth Regional Official Plan and Town of Flamborough Official Plan.

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Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
(b) That **Zoning By-law Amendment Application ZAC-09-036, by Domson Investments Ltd., Owner**, for a modification to the “A” (Agricultural) Zone to permit agri-tourism uses, including a tearoom, gift shop, and entertainment uses on the subject lands, as shown on Appendix “A” to Report PED10237, **be denied** for the following reasons:

(i) That the proposal does not conform to the Hamilton-Wentworth Regional Official Plan, the Flamborough Official Plan, and the Greenbelt Plan, and is not consistent with the Provincial Policy Statement.

(ii) That approval of the application would encourage other similar applications which, if approved, would undermine the intent of the Regional Official Plan and Town of Flamborough Official Plan.

**EXECUTIVE SUMMARY**

The purpose of the proposed amendments to the Town of Flamborough Official Plan and Zoning By-law is to provide policy and zoning regulations to permit agri-tourism uses, including a tearoom, restaurant, gift shop and entertainment uses on the subject property.

The proposal cannot be supported as it does not conform to the Hamilton-Wentworth Regional Official Plan and the Greenbelt Plan, and is not consistent with the Provincial Policy Statement. In light of the fact that the proposed amendments cannot be supported on the basis of non-conformity with Regional and Provincial planning policy, the application has not been circulated to technical agencies for comment, or scheduled for a Public Meeting.

*Alternatives for Consideration - See Page 13.*

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial:** None.

**Staffing:** None.

**Legal:** As required by the *Planning Act*, before proposing a By-law, Council shall hold at least one (1) Public Meeting to consider an application for approval of an Official Plan or Zoning By-law Amendment. As staff are recommending the application be denied, a notice of public meeting is not required and has not been circulated.
HISTORICAL BACKGROUND

The subject lands are approximately 16 hectares (40 acres) in area, with a frontage of approximately 120 metres onto Highway No. 5 and 852 metres onto Millgrove Side Road (see Appendix “A” to Report PED10237). A portion of the property is occupied by a 1,200 square metre building that was built following the issuance of a building permit by the former Township of Flamborough in 1997. According to the information provided by the applicant, the building is currently used as a gift shop, tea room, bakery and deli. In addition, the applicants have advised that the lands surrounding the building are used for a parking lot, open-air market and petting zoo.

According to Building Department records, no permits have been issued for buildings or structures since amalgamation in 2001.

On March 30, 2009, a complaint was received that an agricultural storage building on the subject lands was operating as a public hall without a license.

On March 31, 2009, a complaint was issued that an agricultural storage building on the subject lands was operating contrary to fire prevention requirements.

On March 31, 2009, an order to comply was issued due to non-compliance with the Ontario Building Code requiring a change of use permit from a storage building to a banquet hall.

On August 12, 2009, a Development Review Committee meeting was held to review Formal Consultation File No. FC-09-141 wherein the applicant had proposed to expand the existing uses on the property to also include a vermicomposting operation, wind turbines, and entertainment uses.

On August 18, 2009, correspondence and a Formal Consultation document was sent to the applicants advising of the need for applications to amend the Hamilton-Wentworth Regional Official Plan, Town of Flamborough Official Plan and Zoning By-law 90-145-Z to consider the proposed additional uses.

On September 28, 2009, a Zoning By-law Amendment application was submitted by the applicants to consider rezoning the lands to “agri-tourism” uses.

On October 13, 2009, a Notice of Incomplete Application was provided by City of Hamilton Planning staff advising of the need for a signed formal consultation document, amended application for Regional Official Plan Amendment, Township of Flamborough Official Plan Amendment and rezoning before the applications could be deemed complete.
On October 22, 2009, a signed formal consultation letter was received from the applicants’ agent.

On October 22, 2009, a letter from the applicants’ agent was provided containing an opinion about why the application should be accepted and circulated as is.

On November 4, 2009, a letter was provided by City of Hamilton Planning staff reconfirming that the application is still considered incomplete.

On November 20, 2009, correspondence from the applicants’ agent was received containing a request to modify the application to include an amendment to the Township of Flamborough Official Plan and Zoning By-law and clarifying that the specific uses for the property were to be described as “agri-tourism” including a tearoom, restaurant, gift shop and entertainment uses.

On August 18, 2010, an e-mail letter was received from the applicant’s solicitor with a request to appear as a delegation at the Economic Development and Planning Committee meeting of September 21, 2010, and an opinion on the reasons why the application should be deemed complete in its current form.

On August 27, 2010, a letter was sent to the applicant’s solicitor advising that staff had reviewed the matter and agree with their opinion, and it was intended to take a report to the October 5th Economic Development and Planning Committee Meeting without circulating/notice.

**Details of Submitted Application**

**Location:** 533 Millgrove Side Road

**Owner/Applicant:** Domsons Investments Ltd

**Agent:** Ed Fothergill, Fothergill Planning & Development

**Property Description:**

- **Frontage:** 120 metres (approx.) on Highway No.5
  852 metres (approx.) on Millgrove Side Road

- **Lot Depth:** 194 metres

- **Area:** 16.09 hectares (39.75 acres)
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**EXISTING LAND USE AND ZONING:**

<table>
<thead>
<tr>
<th>Subject Lands:</th>
<th>Existing Land Use</th>
<th>Existing Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject Lands:</td>
<td>Agricultural, gift shop, tea room and bakery, outdoor open air market, farm help apartment</td>
<td>“A” (Agricultural) Zone</td>
</tr>
</tbody>
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| Surrounding Lands:           |                                                                                |                                  |
|------------------------------|--------------------------------------------------------------------------------|                                  |
| West                         | Agricultural land uses                                                         | “A” (Agricultural) Zone          |
| North                        | Agricultural land uses                                                         | “A” (Agricultural) Zone          |
| East                         | Agricultural land uses and Non-Farm residential along road frontage             | “A” (Agricultural) Zone          |
| South                        | School and Agricultural Uses                                                   | “A” (Agricultural) Zone and “I-1” (Institutional) Zone |

**POLICY IMPLICATIONS**

**Greenbelt Plan**

The subject property is designated “Protected Countryside” under the Greenbelt Plan. Subsection 3.1 notes that that the “Protected Countryside” contains an agricultural system consisting of specialty crop areas, prime agricultural areas and rural areas. The two relevant areas in the City of Hamilton are described below:

**Prime agricultural areas**, are those lands designated as such within municipal official plans.

**Rural areas** are those lands outside of settlement areas which are not prime agricultural areas and which are generally designated as rural or open space within municipal official plans. Rural areas are typically characterized by a mixture of agricultural lands, natural features and recreational and historic rural land uses.”
As the subject lands are designated Prime Agricultural Lands in the Hamilton Wentworth Regional Official Plan, the lands are similarly considered prime agricultural areas in the Greenbelt Plan. Therefore, subsection 3.1.3 of the Greenbelt Plan applies, which states that:

“For lands falling within the prime agricultural area of the Protected Countryside the following policies shall apply:

1. Within prime agricultural areas, as identified in municipal official plans, normal farm practices and a full range of agricultural, agriculture-related and secondary uses are supported and permitted.

2. Prime agricultural areas shall not be redesignated in municipal official plans for non-agricultural uses except for:
   a. Refinements to the prime agricultural and rural area designations, subject to the criteria identified in the municipal implementation policies of section 5.2; or
   b. Settlement area expansions subject to the settlement area policies of section 3.4.

3. Other uses may be permitted subject to the general policies of sections 4.2 to 4.6.”

The Greenbelt Plan describes agricultural, agricultural-related and secondary uses in the same manner as the Provincial Policy Statement as follow:

“**Agricultural uses**
Means the growing of crops, including nursery and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including accommodation for full-time farm labour when the size and nature of the operation requires additional employees.

**Agricultural-related uses**
Means those farm-related commercial and farm-related industrial uses that are small scale and directly related to the farm operation and are required in close proximity to the farm operation.
Secondary uses

Means uses secondary to the principal use of the property, including but not limited to, home occupations, home industries, and uses that produce value-added agricultural products from the farm operation on the property.”

Planning staff are of the opinion that the proposal to permit the combined uses of a tearoom, restaurant, gift shop and entertainment uses are not considered either an agricultural use, agricultural-related use or secondary use and are therefore not permitted on a property designated “Protected Countryside – Prime Agricultural Area” in the Greenbelt Plan.

The Greenbelt Plan also contains policies to consider permitting existing uses that would otherwise not comply with the policies of the Plan. These polices state:

4.5 Existing Uses
For lands falling within the Protected Countryside, the following policies shall apply:

1. All existing uses lawfully used for such purpose on the day before the Greenbelt Plan comes into force are permitted.

2. Single dwellings are permitted on existing lots of record, provided they were zoned for such as of the date the Greenbelt Plan came into force, or where an application for an amendment to a zoning by-law is required as a condition of a severance granted prior to December 14, 2003 but which application did not proceed.

3. Outside of settlement areas, expansions to existing buildings and structures, accessory structures and uses, and/or conversions of legally existing uses which bring the use more into conformity with this Plan, are permitted subject to a demonstration of the following:

   (a) Notwithstanding section 4.2.2.6, new municipal services are not required; and,

   (b) The use does not expand into key natural heritage features and key hydrologic features, unless there is no other alternative in which case any expansion shall be limited in scope and kept within close geographical proximity to the existing structure.

4. Expansions to existing agricultural buildings and structures, residential dwellings, and accessory uses to both, may be considered within key natural heritage features and key hydrologic features if it is demonstrated that:
(a) There is no alternative and the expansion, alteration or establishment is directed away from the feature to the maximum extent possible; and,

(b) The impact of the expansion or alteration on the feature and its functions is minimized to the maximum extent possible.

5. Expansion, maintenance and/or replacement of existing infrastructure is permitted, subject to the infrastructure policies of section 4.2.

As the range of proposed uses were not lawfully used as such prior to the adoption of the Greenbelt Plan, this policy cannot be considered.

**Provincial Policy Statement (PPS)**

The subject lands are considered “Prime Agricultural Area” by the Provincial Policy Statement (PPS). Subsection 2.3.3 of the PPS notes that the following uses may be considered in the prime agricultural area:

2.3.3 Permitted Uses

2.3.3.1 In prime agricultural areas, permitted uses and activities are: agricultural uses, secondary uses and agriculture-related uses.

Proposed new secondary uses and agriculture-related uses shall be compatible with, and shall not hinder, surrounding agricultural operations. These uses shall be limited in scale, and criteria for these uses shall be included in municipal planning documents as recommended by the Province, or based on municipal approaches which achieve the same objective.

2.3.3.2 In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards.

The definition of “agricultural”, “agriculture-related” and “secondary” uses are the same as those found in the Greenbelt Plan and, therefore, are not consistent with the Provincial Policy Statement.

**Hamilton-Wentworth Official Plan**

In general, the Regional Official Plan (ROP) provides policies to establish a regional development pattern that at its highest level sets a boundary between the urban and rural areas. This boundary establishes an expectation that population growth will be accommodated in the Urban Areas of the Region, combined with commitments supporting farming and protecting natural resources in the Rural Areas (Sub. 3, REGIONAL DEVELOPMENT PATTERN).
The subject lands fall within the designated “Rural” area and are further classified as “Prime Agricultural Lands”. The Plan recognizes in **Subsection 3.2 Rural Areas** that activities other than farming occur in the Rural Areas. The ROP acknowledges that some of these are related to the rural environment and others are not. These activities, which include farm related activities, land extensive uses, passive, low intensity recreational uses, cemeteries, conservation areas, nature trail systems and other similar uses, are intended to be directed to appropriate areas such as Rural Settlements. Planning staff are of the opinion that a tearoom, restaurant, gift shop and entertainment uses are not related to the rural environment.

Further, **Subsection 3.2.2. Rural Land Use** acknowledges that there are limited non-farm uses which may be considered in the Rural Area that would not interfere with farming or agricultural lands. However, the ROP more specifically notes that these uses must be related to agriculture or use natural resources found in the rural area or provide services to rural residents, or require land extensive holdings; and not be suited for locations in the Urban Area. The Plan goes on to note that when these types of uses are considered, it must be demonstrated that alternative locations for the use are not available within the Urban Area, or Rural Settlement Areas. Planning staff are of the opinion that a tearoom, restaurant, gift shop and entertainment uses are not one of limited uses which may be considered in the Rural Area which, in turn, dismisses the opportunity to test their conformity by considering alternative locations.

**Subsection 3.2.3 Rural Economic Activity** acknowledges that through the ROP the Region also supports the promotion of agricultural viability and the creation of compatible economic opportunities in rural areas. While the preference is to direct industrial or business opportunities to Urban Business Parks and established industrial areas or retail centres, it is acknowledged that some types of business require a rural location. Therefore the ROP provides policy to consider these types of employment and economic opportunities only if, among other things, they are directly related to and serve the agricultural community or directly utilize the natural resources of the Rural Area. Again, staff are of the opinion that a tearoom, restaurant, gift shop and entertainment uses are neither required in a rural location nor directly related to and serve the agricultural community.

In light of the foregoing, Planning staff are of the opinion that the proposal to consider a tea room, restaurant, gift shop and entertainment uses on the subject property does not comply with the ROP.

**Town of Flamborough Official Plan**

The lands are designated “Agricultural” in the Town of Flamborough Official Plan. The following uses are considered on lands designated Agricultural:
(a) agricultural operations, including cultivated field crops, animal husbandry, perennial forage crops, greenhouses, nurseries, forestry and reforestation projects and fish and wildlife management or similar uses. (Subsection B.2.1)

(b) The following specific ancillary uses provided that they are compatible with agricultural uses, support the agricultural economy, have no adverse impacts on ground and surface water systems and the capabilities of the land for safe septic disposal, and comply with all other provisions of this Plan: farm implement dealerships; fertilizer and agricultural chemical sales; livestock assembly points, grain milling facilities and storage of fresh produce; small scale institutional uses (maximum land area of two hectares) which cater to the agricultural community; residential uses in accordance with the policies of this Plan; and, tack shops. (Subsection B.2.3)

As a tearoom, restaurant, gift shop and entertainment uses are not recognized as permitted uses, Planning staff are of the opinion a Local Official Plan amendment is required to consider the proposed uses on the subject property and the proponent has accordingly submitted an Official Plan amendment application.

New City of Hamilton Rural Official Plan (Council Approved)

The subject lands are designated “Agriculture” in the City of Hamilton Rural Official Plan. Policy 2.1 states that in the “Agriculture” designation the uses are limited to agricultural uses, agricultural-related commercial uses, and agricultural-related industrial uses and on-farm secondary uses. Specific policies for agricultural, agricultural related and on-farm secondary uses, are found below:

Agricultural Uses
2.1.1 Agricultural uses are permitted subject to the policies of this Plan. [Mod 22]

Agricultural-Related Uses
2.1.2 Agricultural-related uses are farm-related commercial and farm-related industrial uses that are small scale, producing products and services, wholly and directly related to a farming operation and which are required in close proximity to an agricultural use. They are uses necessary to support agricultural uses and are permitted provided the following conditions are met:

(a) The use must produce products or services directly related to a farming operation, and requires a location in close proximity to a farm operation. Permitted uses shall be limited to grain dryers, feed mills, grain and seed storage facilities, primary farm product bulk storage and processing facilities, farm product supply dealers, livestock assembly points, and agricultural research operations;
(b) The use shall be located to minimize the amount of land removed from agricultural production;

(c) The use shall be located where access is by a road capable of handling the traffic generated. Access to the site shall not create a traffic hazard due to inadequate sight lines or any other traffic hazard;

(d) The use shall not negatively affect environmental features in accordance with section C.2.0, Natural Heritage System of this Plan; and,

(e) Agricultural-related uses shall be subject to Site Plan approval to address appropriate setbacks, building size and location, parking, lighting, drainage, buffering, screening and landscaping, and any other matter.

On-Farm Secondary Uses

2.1.3 To encourage on-farm economic diversification as a means of reinforcing the agricultural economy, limited secondary uses are permitted. On-farm secondary uses are secondary to the primary agricultural use and are limited to agri-tourism uses, farm vacation homes, home industries, kennels, and small scale retailing of agricultural products. On-farm secondary uses shall be permitted provided the following conditions are met in all cases:

(a) The use shall be clearly secondary to the primary agricultural use maintained on the lot;

(b) Any buildings or structures associated with an on-farm secondary use shall allow for ease of conversion to a future agricultural use and be located to form an integral part of the primary farm cluster;

(c) Appropriate development standards shall be established in the Zoning By-law regarding the maximum floor area for such uses, access, parking, outside storage, and any other requirements; and,

(d) Site Plan approval may be required.

Planning staff are of the opinion that a tea room, restaurant, gift shop and entertainment uses are not considered to be uses permitted in the “Agricultural” designation.
RELEVANT CONSULTATION

The subject Official Plan Amendment and Zoning By-law Amendment applications are being recommended for denial based on Provincial and local planning policy grounds. Therefore, the application was not circulated to technical agencies for comment.

ANALYSIS / RATIONALE FOR RECOMMENDATION

1. The proposal cannot be supported as the use of the subject lands for a tea room, restaurant, gift shop and entertainment uses does not conform to the intent of the Provincial Policy Statement, Greenbelt Plan, Hamilton-Wentworth Regional Official Plan, the Council adopted City of Hamilton Rural Official Plan, and the Flamborough Official Plan.

2. Staff acknowledge that the applicant has suggested that the proposed non-agricultural uses may be supported on the basis of supporting “agri-tourism”. It should be explicitly clear that planning staff are not opposed to “agri-tourism” uses in the agricultural area and appreciate their value to the rural area.

Even without a specific definition for “agri-tourism” in either local or provincial planning policy, staff are of the opinion that there is adequate planning policy to vet whether a commercial use is “agri-tourism” by assessing whether it is farm-related, small in scale, directly related to and serving the farm operation and required in close proximity to the farm operation. Without meeting these tests, planning staff are of the opinion that a commercial use is simply a commercial use located in the rural area.

3. In light of staffs’ position that the proposed amendments are contrary to the policies of the Provincial Policy Statement, Greenbelt Plan and Hamilton-Wentworth Regional Official Plan, Planning staff have not circulated the application to technical agencies for comment. As Planning staff are not in a position to support the application in its current form based solely on policy conformity issues, staff are of the opinion that it would be expedient to bring the application to committee with a recommendation for denial in an effort to not unnecessarily delay the consideration of this application.

4. The Hamilton-Wentworth and Town of Flamborough Official Plans permit agricultural uses within the “Prime Agricultural and Rural Areas”; however, Agriculture remains undefined in both policy documents. As the Greenbelt Act requires that all municipal planning decisions conform to the Provincial Greenbelt Plan, staff takes direction from the definitions provided within the Provincial...
Greenbelt Plan which defines agriculture, agriculturally related, and secondary uses as follows:

“Agriculture Uses - Means the growing of crops, including nursery and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including accommodation for full-time farm labour when the size and nature of the operation requires additional employees.

Agricultural-related uses - Means those farm-related commercial and farm-related industrial uses that are small scale and directly related to the farm operation and are required in close proximity to the farm operation.

Secondary uses - Means uses secondary to the principal use of the property, including but not limited to, home occupations, home industries, and uses that produce value-added agricultural products from the farm operation on the property.”

The proposed “agri-tourism” business including a tea room, restaurant, gift shop and entertainment uses are not considered either an agricultural use, agricultural-related use or secondary use. Furthermore, based on information provided and an on-site inspection of the business it is the opinion of staff that the proposed business serves individuals beyond the Rural Area.

On the basis of the foregoing, the proposal is contrary to the Provincial Greenbelt Plan and, consequently, inconsistent with the Provincial Policy Statement, and does not conform to the Hamilton-Wentworth Official Plan and the Town of Flamborough Official Plan.

**ALTERNATIVES FOR CONSIDERATION:**

If the application is refused, the property will remain zoned “A” (Agricultural) and only agricultural uses will be permitted.

As this recommendation is for refusal, it was not necessary according to the provisions of the Planning Act to hold a statutory public meeting or circulate the application to outside agencies. As such, should Committee wish to continue to consider this application, a recommendation for approval cannot be considered at this time. Rather staff would be required to be directed to process the application in accordance with the provisions of the Planning Act, including circulating the application(s) to relevant agencies and holding at least one statutory public meeting prior to considering any recommendation other than refusal.
In order to approve the application(s), Council must deem the proposal to be consistent with the Provincial Policy Statement, and in conformity with the Provincial Greenbelt Plan. Amendments to the Hamilton-Wentworth Official Plan and the Flamborough Official Plan, along with a site-specific zoning to recognize the proposed uses would also be required to facilitate this proposal.

**CORPORATE STRATEGIC PLAN**


**Financial Sustainability**
- Effective and sustainable Growth Management

**Intergovernmental Relationships**
- Maintain effective relationships with other public agencies

**Environmental Stewardship**
- Natural resources are protected and enhanced

**Healthy Community**
- Plan and manage the built environment

**APPENDICES / SCHEDULES**

Appendix “A”: Location Map

:CB
Attaches. (1)