SUBJECT: Application for a Change in Zoning for Lands Located at 2141 Woodburn Road (Glanbrook) (PED05189) (Ward 11)

RECOMMENDATION:

That approval be given to Zoning Application ZAR-05-103, by Paletta International Ltd. (c/o P & L Livestock Ltd.), owner, for a change in zoning from the General Agricultural “A1” Zone to the site-specific General Agricultural “A1-207” Zone, for the lands located at 2141 Woodburn Road (Glanbrook), as shown on Appendix “A” to Report PED05189, on the following basis:

(a) That the subject lands be rezoned from the General Agricultural “A1” Zone to the site-specific General Agricultural “A1-207” Zone.

(b) That the draft By-law, attached as Appendix “C” to Report PED05189, which has been prepared in a form satisfactory to Corporate Counsel, be enacted by City Council.

(c) That the amending By-law be added to Schedule “C”, of Zoning By-law No. 464.

(d) That the proposed change in zoning conforms to the Hamilton-Wentworth Official Plan, and the Glanbrook Official Plan.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department
EXECUTIVE SUMMARY:

The purpose of the application is for a change in zoning to allow an approximately 57.5 hectare (142 acre) farm, containing an existing barn and workshop, to continue for the purpose of agricultural uses. The effect of the proposed By-law is to preclude the use of the existing barn for the housing of livestock, and prohibit the construction of a residential dwelling. This rezoning is consistent with Ontario Municipal Board (OMB) Decision/Order No. 1842 issued on July 15, 2005 (see Appendix “B”).

BACKGROUND:

Proposal

The subject lands are located at 2141 Woodburn Road, in the former Township of Glanbrook (see Appendix “A”). As directed in the OMB’s Order (see Appendix “B), the effect of the rezoning is to allow approximately 57.5 hectares (142 acres) of land, which contains an existing barn and workshop, to be used solely for agricultural purposes, and to prohibit a dwelling as a permitted use and also prohibit the use of the existing barn for the housing of livestock.

Consent Application GL/B-04:197

This application was submitted so as to permit the conveyance of a parcel of land measuring approximately 78 metres by 83 metres containing a 2-storey dwelling with an attached garage for residential purposes, and to retain a parcel of land having an area of approximately 57.5 hectares (142 acres) containing a barn and workshop for agricultural purposes. The Committee of Adjustment denied the application on the basis that the proposal did not conform to the severance policies of the Hamilton-Wentworth and Township of Glanbrook Official Plans. The applicant appealed that decision to the OMB. The OMB issued its Decision/Order on July 15, 2005, in favour of the applicant (see Appendix “B”).

Details of Submitted Application

Owner/Applicant: P & L Livestock Ltd.

Agent: Paletta International Limited, c/o Pino Morano

Location: 2141 Woodburn Road, former Township of Glanbrook

Description: Frontage: 1, 237 metres along Woodburn Road
Depth: Up to 402 metres
Lot Area: 57.5 hectares
EXISTING LAND USE AND ZONING:

<table>
<thead>
<tr>
<th>Subject Lands</th>
<th>Existing Land Use</th>
<th>Existing Zoning</th>
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<tr>
<td></td>
<td>Agricultural</td>
<td>General Agricultural “A1” Zone</td>
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Surrounding Land Uses

<table>
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<tr>
<th>North</th>
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<th>General Agricultural “A1” Zone</th>
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<tr>
<td>South</td>
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<td>General Agricultural “A1” Zone</td>
</tr>
<tr>
<td>West</td>
<td>Agricultural/Rural Residential</td>
<td>General Agricultural “A1” Zone</td>
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ANALYSIS/RATIONALE:

1. The proposed rezoning implements the OMB’s Decision/Order issued on July 15, 2005.

2. The permitted uses under the current General Agricultural “A1” Zone primarily consist of agriculturally related uses, as well as existing residential dwellings. The Township of Glanbrook Official Plan designates the subject lands as “Agricultural”. The primary concern raised through the City’s review of the consent application was based on the grounds that the applicant did not meet the intent of the Glanbrook Official Plan Policy D.2.2.7 (a). This Policy identifies that consents for residential purposes are to meet a set of criteria to be considered a viable farming operation, in this case specifically; the applicant had not owned, resided on and actively farmed the property for the last ten years.

3. At the time, the City also reviewed the consent against the Hamilton-Wentworth Official Plan. The Plan designates the lands as “Rural Area/Prime Agricultural Lands”. The policy framework identifies that new non-agricultural related residential uses will not be permitted in the “Rural Area”. The Plan further outlines that Area Municipal policies will provide criteria for those types of consents permitted in the “Rural Area”. The Plan also states policies for the severance of prime agricultural lands, which the consent application did not comply with. Largely, the argument focused on whether or not the proposed severances met Policy D.2.2.6 with respect to “the consolidation of productive agricultural holdings by the acquisition of abutting lands for the purposes of
increasing the size of, or establishing a viable farming operation" as opposed to constituting a policy conflict with the PPS farm consolidation Policy. Based on these policies, as well as others, the Committee of Adjustment denied the application. The applicant, subsequently, appealed that decision to the OMB.

4. The OMB heard the matter earlier this year, professional planning evidence was provided by both the applicants and the City’s Planners. The Board found that the severance application had regard to all relevant matters set out in Section 51(24) of the Planning Act. The Board indicated that the severance did represent good planning and is in the public interest. Therefore, the Board ordered that the appeal be allowed and that the provisional consent is to be given, subject to the following conditions:

1. The Applicant shall submit a deposited Ontario Land Surveyor’s Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar.

2. 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 and Licensing Division.

3. The Applicant shall satisfy all requirements, financial and otherwise, of the City of Hamilton, Development and Real Estate Division (Development Planning East Section).

4. The retained lands shall be rezoned, at the Applicant’s expense, to:
   
   i) Preclude a dwelling as a permitted use.
   
   ii) Preclude the use of the existing barn for the housing of livestock.

**ALTERNATIVES FOR CONSIDERATION:**

Should the application for amendment to Zoning By-law No. 464 not be approved, this action would be inconsistent with the Order issued by the OMB.

**FINANCIAL/STAFFING/Legal IMPLICATIONS:**

Financial: N/A.

Staffing: N/A.

Legal: As required by The Planning Act, Council shall hold at least one (1) Public Meeting to consider an application for amendment to the Zoning By-law.
Policies Affecting Proposal:

Greenbelt Plan

The subject lands are designated as “Protected Countryside” within the Greenbelt Plan. As the nature of the application is to modify the existing zoning to remove a residential dwelling as a permitted use in perpetuity as the result of a farm consolidation, the proposal does not conflict with the policies of the Plan as outlined in Policy 4.6.3(c).

Provincial Policy Statement

The application has been reviewed with respect to the Provincial Policy Statement (PPS). The application is consistent with the principles and policies of the PPS.

Hamilton-Wentworth Official Plan

The subject property is designated as “Rural Area/Prime Agricultural Lands” within the Hamilton-Wentworth Official Plan. As the intent of the application is to implement a recent OMB Decision which is deemed to be in conformity with Section 51(24) of the Planning Act, the application conforms to the policies of the Hamilton-Wentworth Official Plan.

Township of Glanbrook Official Plan

The subject lands are designated “Agricultural” on Schedule ‘A’ – General Land Use Plan. The predominant use of land in the “Agricultural” shall be for agriculture, forestry, and activities connected with conservation of soil and wildlife. Furthermore, this designation also includes field crops, market gardening crops, orchards, vineyards, livestock and poultry production, nurseries, greenhouses, apiaries and mushroom farms. Residential uses are also permitted. The application conforms to the Official Plan.

Relevant Consultation:

Corporate Services has indicated that a tile drainage annual charge of $938.89 is due to continue until 12/31/08. This charge is calculated by the Ministry of Agriculture and Food.

Public Works Department (Traffic Engineering and Operations Section) has advised that any new, change in use or width of an access to Woodburn Road or Guyatt Road requires an Access Permit from this office. Payment of $62.47 is required to initiate the permit process, as well as a plan illustrating access location and design, ditch line, adjacent utility poles, street trees, etc. Any costs for traffic sign or utility relocation, or other access related items are the sole responsibility of the applicant/owner.
The following Departments and Agencies had no comments or objections:

- Hamilton Conservation Authority
- Public Works Department (Forestry and Horticulture Section)

Public Consultation

The Public Participation Policy, adopted by Council on May 29, 2003, provides that preliminary circulation shall not be required if the application is part of the implementation of another application, such as a consent application, which has been considered within one year of other public involvement and participation opportunities. No submissions were made on this application at the Committee of Adjustment meeting. In accordance with the requirements of the Planning Act, notice of the Public Meeting was circulated to sixty-one property owners within 120 metres of the subject property. No comments have been received to date. In addition, a Public Notice Sign was erected on the property on November 3, 2005.

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
Participation in community life is accessible to all Hamiltonians.

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

Economic Well-Being is enhanced. ☑ Yes ☐ No
The economic base is diversified.

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

JM
Attachs. (3)
Appendix “A” to Report PED05189

Location Map

Planning and Economic Development Department

File Name/Number: ZAR-05-103
Date: October 6, 2005

Appendix “A”
Scale: N.T.S
Planner/Technician: JM/MG

Subject Property
2141 Woodburn Road (Paletta International)

Change in Zoning from General Agricultural “A1” Zone to the Site Specific General Agricultural “A1-207” Zone

Ward 11 Keymap

T&C File Name: N:\T\c\Location_Maps\2005\October\corel\ZAR-05-103.cdr
P & L Livestock Limited has appealed to the Ontario Municipal Board under subsection 53(19) of the Planning Act, R.S.O. 1990, c. P.1 3, as amended, from a decision of the Committee of Adjustment of the City of Hamilton which dismissed an application numbered B-197/04 for consent to convey part of the lands composed of Part of Lot 5, Concession 3, municipally known as 2141 Woodburn Road, in the City of Hamilton.

OMB File No. C050039

P & L Livestock Limited has appealed to the Ontario Municipal Board under subsection 53(19) of the Planning Act, R.S.O. 1990, c. P.1 3, as amended, from a decision of the Committee of Adjustment of the City of Hamilton which dismissed an application numbered B-196/04 for consent to convey part of the lands composed of Part Lot 3 & 4, Concession 2, municipally known as 2330 Guyatt Road, in the City of Hamilton.

OMB File No. C050040

APPEARANCES:

<table>
<thead>
<tr>
<th>Parties</th>
<th>Counsel</th>
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<tr>
<td>P &amp; L livestock Limited</td>
<td>S. Snider</td>
</tr>
<tr>
<td>City of Hamilton</td>
<td>N. Smith</td>
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DECISION DELIVERED BY SUSAN B. CAMPBELL AND ORDER OF THE BOARD

THE APPLICATION

P & L Livestock Limited (the “Applicant”) made two applications to the City of Hamilton (the “City”) for consents to sever in respect of two properties it owns in the former Township of Glanbrook (the “Township”). For the property at 2330 Guyatt Road the Applicant proposed to convey a .71-acre parcel of land containing a detached single-family home, for residential purposes, and to retain a 206.04-acre parcel with a barn and a shed, for agricultural purposes. With respect to the property at 2141 Woodland Road, the Applicant proposed to convey a 1.6-acre parcel of land containing a detached single family home, for residential purposes, and to retain a 142.58 acre parcel with a barn and a workshop, for agricultural purposes. The application with
respect to the Guyatt Rd. property was amended during the course of the hearing, on the consent of the City such that the severed parcel is now proposed to be 1.14 acres.

The Committee of Adjustment (the “COA”) of the City denied both applications, finding that the proposals did not comply with the severance policies of the official plans of the Regional Municipality of Hamilton-Wentworth and the Township; they were not in the interest of proper planning and development for the area; and they did not comply with section 51(24) of the Planning Act (the “Act”). In the Minutes of the COA (Exhibit #1, TAB 4), the Committee also stated that it was “not satisfied that the applicant is a bona fide farmer”.

THE AGRICULTURAL OPERATION

Mr. Paletta, the President of the Applicant, testified at length about the agricultural operations of the Applicant, specifically about the agricultural use of the subject lands. The Applicant owns some 3,000 acres of land designated for its agricultural services division. Included in this holding is the largest feedlot operation in eastern Canada, located in Burlington. It was Mr. Paletta’s evidence that the balance of the company’s agricultural holdings are used to grow cash crops or feed for use in the feedlot. The farms are farmed by contractors who supply labour and equipment while the Applicant pays all costs of the farming like seed and fertilizer. Management decisions are made by the Applicant, its farm manager and the contractor.

It was Mr. Paletta’s unchallenged evidence that the subject properties were purchased by the Applicant for agricultural purposes, and not as development land for Paletta International Corporation. He testified about the changing nature of farming in North America, which requires the Applicant to be more efficient in operation and to seek economies of scale. Therefore, the Applicant is attempting to expand its land base to put together “appropriately sized parcels”.

Mr. Paletta testified that the subject properties are to be used for crop production, not for housing livestock. The barns on the properties are outdated, and if required, the Applicant would remove the barns. However, Mr. Paletta testified that the houses on each of the two properties are in very good condition and therefore the Applicant seeks the severances to permit the residential parcels to be sold. He testified that the
Applicant does not need the houses and has no interest in leasing the houses, as it is not in that business. In response to cross-examination, Mr. Paletta testified that he did not want to demolish the houses as they are in good condition and he did not think it was right to destroy perfectly good housing stock.

Shawn Colville, qualified by the Board as an agrologist with an expertise in agricultural resource assessment and Minimum Distance Separation (MDS) guidelines, testified on behalf of the Applicant. His evidence was supportive of that of Mr. Paletta and he specifically addressed issues arising from MDS guidelines. It was his expert opinion that the existing barns could not be used for livestock and to deal with the MDS guidelines any such use should be prohibited as a condition of the granting of the consents. In addition, on the retained lands, no dwelling should be permitted. The proposed condition to deal with these matters is contained in Exhibit #7.

The Board finds, based on the evidence of these two witnesses that the Applicant is a bona fide farmer. The Board accepts the uncontradicted evidence of both witnesses that farming is changing in the twenty-first century and that to allow Ontario agriculture to compete on a global basis the changes must be recognized. It is particularly true that livestock farms are expanding (Exhibit #8, Statistics Canada Report) and that the “business” of farming is evolving. The traditional family farm, with a house for each farmer’s family, is now only one model of farming in Ontario.

THE PLANNING REGIME

Peter Walker was qualified by the Board to provide expert land use planning evidence on behalf of the Applicant. Mr. Walker first dealt with the size of the severed lot at 2330 Guyatt Rd. The lot is now to be 1.14 acres, which means that in terms of size it now complies with the relevant by-law requirement that the lot be approximately one acre. The Board amended the Application in accordance with Exhibit #10.

Mr. Walker put the properties in their context, testifying that while both properties are farms, they a located on roads that contain a number of single-detached homes in the immediate vicinity of the farms. Mr. Walker noted that when one drives in the area, one “is not driving through pristine fields”.
It was Mr. Walker's opinion that the planning documents relevant to the applications support the type of severances requested as they support sustainable development, sustainable farming and the protection of agricultural resources. Particularly of concern is the protection of soils, the primary agricultural resource. It was Mr. Walker's opinion that in protecting agricultural resources, the trend toward consolidation of farming operations must be recognized. With consolidation there is the possibility of surplus housing, no longer needed by the individual farmer's family. Such housing should be seen as a valuable part of the housing stock, while severances should be as small as possible to minimize the impact on agriculture.

Mr. Walker testified that the proposed severances have regard to the Provincial Policy Statement's (the "PPS") goal of "protecting resources for their economic use and/or environmental benefits". Policy 1, Efficient, Cost-Effective Development provides that "rural areas will generally be the focus of resource activity"; long-term economic prosperity will be supported by "optimizing the long-term availability and use of agricultural resources".

Policy 2.1 sets out specific agricultural policies. Again, it was Mr. Walker's opinion that the applications have regard to these policies. Prime agricultural land is to be protected for agriculture, and lot creation for residential purposes is limited. However policy 2.1.2 (c) 2 allows for a new lot for residential purposes to be created for a "residence surplus to a farming operation".

Mr. Walker reviewed the Hamilton-Wentworth Official Plan (the "Regional OP") and was of the opinion that the goals of the OP are met with the proposal. Part A of the Regional OP speaks "to creating a sustainable region". The Region has an interest in "managing natural areas and resources" and "promoting and enhancing economic activities, which respect and augment ... natural resources of our community". Mr. Walker was of the opinion that "resources" include "soils" which are being properly managed by the Applicant. Further, in his opinion, the Applicant's approach of consolidating parcels of land to allow for more efficient competition enhances "sustainability".
Policy 4.2 specifically addresses "the business of farming", providing that "two things that are necessary to preserve the agricultural economy are adequate, stable incomes for farmers and protection against urban sprawl into agricultural land and the resulting land use conflicts..." Mr. Walker was of the opinion that the proposal meets this goal. Consolidation of agricultural lands preserves the agricultural economy and there is no urban sprawl associated with the proposed severances. Mr. Walker noted that the Regional OP emphasizes small farms but that the consolidation of land into larger farms is becoming the way to compete.

Policy 2.1 of the Regional OP deals with soils and the protection of agricultural soils. "Soils are recognized as indispensable to the sustainability of the Region", and the section specifically provides that, "one of the most important factors in ensuring that future generations have the ability to produce adequate food supplies is the availability of suitable farmlands in appropriately sized parcels".

Policy 3.2 of the Regional OP deals with Rural Areas, the land designation of the subject properties. Development is to be concentrated in Rural Settlements. Mr. Walker noted that no new development is proposed with the subject applications; the houses on the proposed severed lots already exist and no new houses will be built on the retained lots.

Severances are dealt with in Policy 8. Severances within Rural Areas are generally inconsistent with principles of sustainable development as they take land out of production. However, Mr. Walker testified that would not be the case with the proposed severances. The severed lots meet the minimum lot size of approximately one acre and no productive agricultural land is being taken out of production. The one-acre lots will consist of the existing houses and the already landscaped portion associated with the houses. Policy 8.1.1 is, in Mr. Walker's opinion, consistent with the PPS in requiring area municipal plans to deal with "consolidation of agricultural lands, surplus farm houses (and) continued farm viability". The proposed severances facilitate the consolidation of agricultural lands and deal with the surplus farmhouses.
Policy 8.2.2 requires that severed parcels be located on the portion of an applicant's land where "it will have the least impact on farming and in a location which does not create an infilling situation". Mr. Walker testified that that is the case with the proposed severances; the houses and landscaped areas are to be severed; the farmland will continue to be farmed.

In Mr. Walker's opinion, Policy 8.3.1 deals specifically with farmer retirement severances, which is not the case with the Applicant's requested severances. A "farm related residential lot" is addressed in this section and such a lot is defined as a "retirement lot for a bona fide farmer..."

Mr. Walker also reviewed the Township of Glanbrook's Official Plan (the "Township OP"). He opined that this plan must be considered in light of the specific applications. In his opinion no new development would take place; the houses already exist with their landscaped areas; farming will continue on the retained lands. In Mr. Walker's opinion the policies of the Township OP are met. Policy A.2.7 seeks "to maintain the agricultural lands outside Settlement, Industrial and Commercial areas for agricultural production". In Mr. Walker's opinion the Applicant's consolidation of lands is maintaining the use of agricultural lands. Policy A.7.2 encourages the efficient use of all land resources and the continuation of viable agricultural uses. In Mr. Walker's opinion this policy goal is met by the applications.

Policy B.1.1 sets specific Agricultural Land policies. The OP "encourages the continuation of the agricultural sector of the Township economy... the continued working of all existing farmlands and the preservation of prime agricultural lands... shall be encouraged". In Mr. Walker's opinion this goal is met.

Land Severance Policies are set out in section D. In D.1.1 the Township OP refers to the Planning Act, 1983. Mr. Walker was of the opinion that this demonstrates the "dated aspect" of the plan, and the fact that it has not been updated to come into compliance with the more recent PPS and Regional OP.

Mr. Walker testified that the proposed severances comply with the spirit of these policies. D.2.2.1 requires that severed parcels in an agricultural area shall be located on the least productive portion of the applicant's land holding; have appropriate frontage
on a public road; and not interfere with the efficient agricultural operations of the remaining and adjacent lands. D.2.2.2 requires the severed parcel to be limited in size. These policy goals are met in Mr. Walker's opinion.

The focus of the City's concerns, Mr. Walker testified, is D.2.2.6, which provides that "a consent may be considered if it is necessary for the consolidation of productive agricultural holdings by the acquisition of abutting lands for the purposes of increasing the size of, or establishing a viable farming operation". Mr. Walker testified that the premise that a consolidation will be in respect of abutting lands is not reflective of reality. For farm operations like that of the Applicant to consolidate they must acquire lands, which become available. Such lands do not necessarily abut.

In Mr. Walker's opinion D.2.2.7 makes it clear that the Township OP does not contemplate nor apply to the type of consolidation the Applicant has undertaken. It applies to family farms, owned by resident farmers who may seek a retirement severance.

Mr. Walker therefore concluded that the "unduly restrictive" abutting requirement found in D.2.2.6 does not reflect either the goals of the Regional OP nor the PPS, and should not be applied to the subject applications. The "viable farm" envisioned by this dated Township OP is the traditional family farm which is not the only farm form which sustains agriculture in the Township and the Region.

Finally, Mr. Walker reviewed the Township's zoning by-law. The uses proposed for both the retained and severed lots are permitted. The Applicant is willing to seek a rezoning to preclude a house from being built on the retained parcels so that no "development" will take place. "Development" is a defined term in the by-law. It means, inter alia, "the making of any material changes in the use of any building, structure or land". In addition, lot size standards set out in the zoning by-law are met.

Mr. Walker was therefore of the opinion that goals of the PPS, the Regional OP, the Township OP and the Zoning By-law are met by the proposed severances. Further, he testified that section 51(24) of the Act is complied with: the goals of the PPS are met; preserving housing stock and agricultural land is in the public interest; the general intent of the OP is met; the severed parcels are already used for housing, therefore the use is
suitable; the road frontage requirements are met; the lot dimension requirements are met. In his opinion, the proposed conditions to the consents to sever ensure that no new development will take place and that any MDS concerns are addressed.

Simon Deiaco was qualified by the Board to provide expert land use planning evidence on behalf of the City. Mr. Deiaco reviewed the policy documents for the Board and came to a very different opinion than that of Mr. Walker. In his opinion the policies found in the PPS and the OP seek to encourage farming and the protection of agricultural land and to limit conflicts among different land uses. The Township OP, in his opinion, is not in conflict with the PPS and the Regional OP. Rather, it is the final step in a policy process, which seeks to protect agricultural land.

Mr. Deiaco pointed to Policy 2.1.2 of the PPS in which lot creation in prime agricultural areas is generally discouraged. Section 2.1.2 (a) speaks to lot creation in terms of “flexibility for future changes in the type and size of agricultural operations”. Section 2.1.2(c) strictly limits situations in which new lots may be created.

In reviewing the Regional OP, Mr. Deiaco particularly noted Policy 4, the Business of Farming, and the goal of preserving the agricultural economy and protecting it against urban sprawl. He agreed with Mr. Walker that the Applicant’s proposal does not constitute urban sprawl, however he was of the opinion that it would give rise to a potential land use conflict, against which farmland should be protected. Policy 3.2.2, Rural Land Use, provides that “new non-agriculturally related residential uses will not be permitted in Rural Areas except as provided for in Policy D-8”. Mr. Deiaco does not accept that the residential use would not be new, as it already exists, because it would no longer be associated with a family farm. Therefore, in his opinion, Policy D-8 applies to this application.

In Mr. Deiaco’s opinion, the proposal including suggested condition number 4 limits the flexibility of the agricultural operation on the subject lands and therefore is not in keeping with the Regional OP.

In considering the Township OP, Mr. Deiaco disagreed that it in any way conflicts with the PPS or the Regional OP. In his opinion, the Township OP goes beyond the “minimum standards” set in the PPS and the Regional OP. Policy D.2.2.6 is restrictive,
but it is, in his opinion, an appropriate standard to meet the goals of the PPS and the Regional OP. By including an abutting requirement, the Township OP further limits the creation of non-residential farm lots in the event of farm consolidations.

Mr. Deiaco was cross-examined at some length about the extra “restriction” the Township OP establishes with respect to lot creation. He remained firm in his opinion: the extra restriction does not make it more difficult to consolidate land for agricultural purposes; it does not threaten housing stock; and it does limit the potential for conflicts among land uses. He disagreed with the proposition that rather than creating a higher standard for lot creation, Policy D.2.2.6 constitutes a policy conflict with the PPS and the Regional OP.

BOARD’S FINDINGS

Counsel for the Applicant submitted that this case involves two different approaches to interpreting policy documents, particularly official plans. In his submission, Mr. Deiaco, as he admitted, took a strict interpretation approach. Policy D.2.2.6 allows for consents in land consolidation cases only when the consolidated parcels abut. If they do not abut, no severance may be granted. Counsel contrasted this to Mr. Walker’s approach in which he submitted that Mr. Walker considered the OP as a planning document, not a statute, to be strictly interpreted. Mr. Walker looked at the overall policy objectives found in the OP and considered whether the proposal achieves the underlying policy objectives and constitutes good planning.

Counsel for the City submitted that the Township OP is more restrictive than the PPS and the Regional OP; that it was intended to be more restrictive; and that in setting a higher standard for residential severances, it is entitled to be more restrictive. To protect agricultural land the Township has the right to restrict the creation of residential lots in Rural Areas. Every new residential lot created has the potential to create conflicts with neighbouring agricultural uses.

Counsel for the City also submitted that there is nothing about Policy D.2.2.6 that discourages efficient agricultural land consolidation. She noted that the Applicant need not change its plans for its farm operation in any way if the consents are denied. It will simply be prevented from selling two residential lots.
Counsel for the Applicant cited a number of cases on the interpretation of policy documents like an official plan. In *Bela Himmel Investments Ltd. v. Mississauga (City)*, [1982] O.J. 1200, the Divisional Court held that “Official Plans are not statutes and should not be construed as such...official plans set out the present policy of the community concerning its future physical, social and economic development. In such a document there will be inconsistencies and uncertainties when considered in light of a specific proposal. It is the function of the Board in the course of considering whether to approve a by-law to make sure it conforms with the official plan. In doing so, the Board should give to the official plan a broad liberal interpretation with a view to furthering its policy objectives”.

In *Pursley v. Delhi (Township)*, [1997] OMBD No.1501, the Board considered the interaction of the PPS and relevant official plans and found that in considering a application against an official plan “... the Board continues to have a statutory duty to have regard to the policies of the province as stated and in fulfilling this duty, it must, as it always has, balance one expression of the policy against another”. In this case the Board was dealing with agricultural policies and a strict reading of OP policies would have militated against approval of the application. However the Board found that in considering planning documents it should look at overall planning goals and objectives and not focus on technical interpretations. The Board said, “the Board’s practice is to read plans as policy and not as statutes, and to interpret the meaning of plans in a way that generally promotes or advances the basic objectives of the plans”.

The Board in *Lodestar Farms Ltd. v. Essa (Township) Committee of Adjustment*, [1997] OMBD No.270 considered an application similar to that in the case at hand. In *Lodestar Farms* the municipality’s official plan spoke to a severance for a dwelling resulting from the consolidation of “adjacent” farms. As in the case at hand the consolidated farms were not “adjacent” or “abutting”. The Board found that in interpreting the relevant section of the official plan the Board could not “... ignore the economic and operational reality of much of present day agriculture”.

The Board must accept the direction of the Divisional Court to give planning documents "a broad liberal interpretation with a view to furthering (their) policy objectives". The policy objectives found in the PPS are very apparent: resources are to be protected for their economic use and/or environmental benefits. Prime agricultural land is a significant resource, and the ongoing viability of agricultural operations requires protection.

The Regional OP builds on this policy objective in speaking to "sustainability" and the need to "preserve the agricultural economy". In considering sustainability, the Regional OP provides that "one of the most important factors in ensuring that future generations have the ability to produce adequate food supplies is the availability of suitable farmlands in appropriately sized parcels" (emphasis added).

The Board heard persuasive and uncontradicted evidence from Messrs. Paletta and Colville about the evolution of farming in Ontario in the twenty first century. For Ontario agriculture to compete on a global basis, the witnesses testified that efficient land consolidation, creating economies of scale is vital. The Board accepts this evidence and must consider it in light of the Provincial and Regional policy objectives of protecting agricultural resources and enhancing sustainability of farm operations. The Board finds that land consolidations like that undertaken by the Applicant further these policy objectives and should be supported.

Counsel for the City submitted that the Applicant would consolidate land and carry on its agricultural operations regardless of whether the severances are granted. With respect, that is not a relevant consideration. If the Province and the Region seek viability and sustainability of the agricultural sector and land consolidation is a way to promote these goals, policy documents should not be interpreted in a manner setting up disincentives to appropriate consolidation. The evidence was that this applicant would be able to carry on with its farming operation even if it cannot dispose of surplus houses, but the Board assumes that not all farmers seeking to consolidate operations to survive and compete will be in a similar fortunate position.
The evidence presented to the Board was that two good quality houses, that were not occupied by resident farmers prior to the applications being made, could be made available to individuals who want to buy a house, without any negative impact on the farm operations. In fact the subject properties are located on roads with other single detached houses in the immediate vicinity. The Board accepts Mr. Walker’s evidence that the severances do not constitute “development” for the purposes of the planning documents. The “facts on the ground” will not change in any appreciable way. With the severances, non-farmers as owners may occupy houses that have been occupied by non-farmers as tenants. Good quality houses will remain part of the housing stock and good quality farmland will continue to be farmed. The Board accepts Mr. Colville’s evidence about the MDS guidelines and trusts that for the subject farming operation, like any other farming operation, the guidelines will work to minimize conflicts between land uses.

The Board finds that it would be wrong to interpret the Township OP so strictly that land consolidations, which further Provincial and Regional policies would be discouraged. This is especially so when one is considering an official plan which refers to a 22-year old Planning Act. This Board will give the planning documents, the PPS, the Regional OP and the Township OP a broad, liberal interpretation such that their policy objectives are furthered. The requested severances facilitate the consolidation of farmland into economically viable parcels and therefore further sustainability.

The Board finds that the severance application have regard to all relevant matters set out in section 51(24) of the Act. The severances represent good planning and are in the public interest. Therefore the Board orders that the appeals are allowed and the provisional consents are to be given:

Subject to the following conditions:

1. The Applicant shall submit a deposited Ontario Land Surveyor’s Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar;

2. Applicant shall receive final approval of any variances from the requirements of the Zoning By-law as determined necessary by the Planning and Development Department Building and Licensing
Division;

3. The Applicant shall satisfy all requirements, financial and otherwise, of the City of Hamilton, Development and Real Estate Department (Development Planning East Section; and

4. The retained lands shall be rezoned, at the Applicant’s expense to:
   
   i) Preclude a dwelling as a permitted use; and
   
   ii) preclude the use of the existing barn for the housing of livestock.

It is ordered by the Board.

"Susan B. Campbell"

SUSAN B. CAMPBELL
VICE-CHAIR
CITY OF HAMILTON

BY-LAW NO. __________

To Amend Zoning By-law No. 464 (Glanbrook)
Respecting Lands located at 2141 Woodburn Road

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap.14, Sch. C. did incorporate, as of January 1, 2001, the municipality "City of Hamilton";

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as "The Corporation of the Township of Glanbrook" and is the successor to the former Regional Municipality, namely, The Regional Municipality of Hamilton-Wentworth;

AND WHEREAS the City of Hamilton Act, 1999 provides that the Zoning By-laws of the former area municipalities continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS Zoning By-law No. 464 (Glanbrook) was enacted on the 16th day of March, 1992, and approved by the Ontario Municipal Board on the 31st day of May, 1993;

AND WHEREAS the Council of the City of Hamilton, in adopting Section of Report 05-______ of the Planning and Economic Development Committee at its meeting held on the day of , 2005, recommended that Zoning By-law No. 464 (Glanbrook), be amended as hereinafter provided;

AND WHEREAS this by-law is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former Township of Glanbrook);

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. Schedule “A”, appended to and forming part of By-law No. 464 (Glanbrook) is amended by changing from the General Agricultural “A1” Zone to the General Agricultural “A1-207” Zone, the land comprised in Part of Lot 5, Concession 3, Township of Binbrook (2141 Woodburn Road), the extent and boundaries of which are shown on a plan hereeto annexed as Schedule "A".

“A1-207 NO. 2141 WOODBURN ROAD

Notwithstanding the uses permitted in Subsections 8.1 PERMITTED USES of SECTION 8: GENERAL AGRICULTURAL “A1” ZONE, the following uses shall be prohibited:

(a) a single detached dwelling; and,

(b) the use of the existing barn for the housing of livestock.”

3. The Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this day of , 2005.

_________________________________   ___________________________________
MAYOR                             CLERK

ZAR-05-103
OMB Decision/Order No. 1842
Subject Property
2141 Woodburn Road (Paletta International)

Change in Zoning from General
Agricultural “A1” Zone to the Site Specific
General Agricultural “A1-207” Zone

Schedule "A"
Map Forming Part of
By-Law No. 05-

to Amend By-Law No. 464

Planning and Economic Development Department

This is Schedule “A” to By-Law No. 05—

Passed the ……….. day of ………….., 2005

Clerk

Mayor

T&J File Name: N:\T&J\Life & Zoning\By-Law Ammend\By-Law Schedule_A0090\October06\ZAR-05-103.pdf