To: Chair and Members
Planning & Economic Development Committee
Outstanding Business Item No. EE and Issue: Resolution from Township of Stone Mills respecting amending the Provincial Policy Statement to Phase in Section 2.3.4 Lot Creation and Lot Adjustments over a Five Year Period
PED05205

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Date: November 18, 2005

Re: Provincial Policy Statement (PPS) Phase-In – Lot Creation and Adjustments (City Wide) (PED05205)

Council Direction:

At its meeting of October 12, 2005 Council referred the resolution, attached as Appendix A to Report PED05205, from the Township of Stone Mills to the Planning and Economic Development Committee for further consideration. The Township’s resolution requests the Province of Ontario to ‘phase-in’ the implementation of recent changes to the Provincial Policy Statement (PPS) respecting rural lot severances.

Information:

Context Differences

The Township of Stone Mills is a rural municipality of 7,250 people located in the County of Lennox-Addington, between Bellville and Kingston in Eastern Ontario. The Township has only a few small villages to provide a focus for non-farm development. Its rural area is dominated by highly variable soils for agricultural production, some of which may be of high quality. The Township is located in a district of Ontario that experiences a slow and erratic pattern of growth. Most new housing in such areas results from small initiatives by land owners. In such circumstances it can be difficult for new households to find housing at the time, in the location and in the form they need.

Conditions in the City of Hamilton differ significantly. The City has a rural population of 42,500 people, only 5% of which live in households supported by income from agriculture or other rural industries. The majority of active farm land in the City is rented
by farmers from others. The City has numerous urban and rural settlement areas where residential development is permitted. Many land development firms are active in subdividing land and building new housing to meet local market demands in a variety of locations and building forms. The City's designated growth area can sustain all urban and rural housing requirements for at least the next 15 years.

PPS Policy Changes

Provincial policy documents have defined the scope of permissible rural severance policy in Ontario since 1978. Earlier versions endorsed residential lot severance in agricultural areas for ‘retiring farmers’ and ‘family-related’, farm help purposes. Changes to the new PPS implemented in March 2004 have eliminated most rural lot severance opportunities.

Previous studies by Ontario municipalities and universities have repeatedly confirmed that ‘retiring farmer & farm family help’ lot severances have been widely abused. Only a tiny percentage of the lots created under this policy are normally occupied for bona fide, farm-related purposes. The overwhelming majority of ‘farm’ severance lots created in Ontario have immediately been sold to new owners with no substantive relationship to farming. Even when lots start out to be used for legitimate farm purposes, the new dwelling will inevitably be sold for non-farm interests. Given these conditions, a significant number of Ontario municipalities have prohibited ‘retiring farmer’ and ‘farm family help’ severances for many years, notwithstanding the old PPS.

The Township’s resolution seeks an ‘exemption’ from this PPS policy change for a 5 year period ‘to provide municipalities with sensible and practicable solutions to identifying on planning documents a true reflection of prime agricultural areas’.

The precise nature of this ‘phase-in’ proposal is not stated in the resolution. Due to wide variations in agricultural and Official Plan policy conditions throughout Ontario, a phase-in could have significantly different impacts depending on the structure of a ‘phase-in’ policy.

The resolution does not acknowledge that many Official Plans in Ontario have already refined their rural policies for ‘prime’ and ‘non-prime’ agricultural districts. Nor does it acknowledge the LEAR methodology, sanctioned by the Ministry of Agriculture and Food (OMAF), which has recently been employed in Hamilton to make reliable and defensible distinctions between prime and non-prime farm areas. Rural policy initiatives used elsewhere in Ontario recognize that planning for sustainable agriculture is not simply a matter of looking at soil quality. These methods evaluate local agricultural conditions as well as permanent constraints on commercial farm production arising from property fragmentation, lack of farm support services and urban or rural residential land use conflicts.

Like the Township of Stone Mills, the City has pre-existing lot severance policies which are not consistent with the new PPS. Council directed that such discrepancies be rectified in 2003. A major research and policy development project is nearing
completion for the entire rural area. We have completed and received OMAF endorsement of a LEAR study which establishes the location and rationale for ‘prime’ agriculture planning districts in the City’s rural area.

The LEAR analysis indicated that approximately 1/3 of the rural land previously assumed by local OPs to be ‘prime’ can be removed from designations which invoke Section 2.3.4 of the PPS. Staff is now consulting with the Agricultural and Rural Affairs Advisory Committee on new draft planning policies for all rural and agricultural areas within City boundaries. These new policies will replace all of the current Official Plan (OP) documents. Draft OP amendments will be brought forward for Committee and public comment in January 2006.

Phase-In Process

The Ontario Planning Act requires all municipalities to ensure decisions made on planning applications received after March 2005 ‘shall be consistent with’ the PPS. In the event of a conflict between the policies of the new PPS and any pre-existing local Official Plan that is more lenient or permissive, the Planning Act establishes that the PPS shall prevail.

Neither the PPS nor the Planning Act provide for a ‘phase-in’ of any policy for new applications received after March 2005. This is a long-standing legislative practice in Ontario. The Province released draft documents and conducted a series of public notices and meetings to outline its intent to amend specific PPS policies prior to enactment of these new planning ‘rules’. Anyone who wished to avoid PPS policy changes had over 18 months to make an application under the ‘old’ rules. Once that application has been accepted by a municipality it is processed under the ‘old’ PPS rules, no matter how long it may take. The City continues to process a large number of applications made in advance of the new PPS and Greenbelt Plan taking effect.

The Township of Stone Mills is also located in an area of the Province where the Greenbelt Plan and Niagara Escarpment Plan do NOT apply. Provincial plans have superior status to the PPS. They override both the local Official Plans and the PPS in the event of a conflict. The vast majority of the City’s rural area is subject to the Greenbelt and Niagara Escarpment policies which set more rigorous requirements for the severance of rural lots than the PPS.

Any ‘phase-in’ which the Ontario government may contemplate in response to the Township’s resolution would have no effect over most of the rural area in Hamilton because the Greenbelt and Niagara Escarpment Plans have over-riding authority to the PPS. The forthcoming Places to Grow Plan may include supplementary policies for the remainder of the rural area of Hamilton that does not fall within Greenbelt of NEC boundaries.
Conclusion:

The issues raised by the Township of Stone Mills resolution have limited relevance in the City of Hamilton. Official Plan amendments to bring current rural policies into line with new requirements of Provincial Plans and the PPS are forthcoming in the near future.

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Attach. (1)
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RESOLUTION OF COUNCIL

Moved by: Councillor Albert Jelley
Seconded by: Councillor Douglas Davison

WHEREAS the Province of Ontario saw fit to pass legislation in November 2004 with respect to taking steps toward the goal of an effective and accountable land-use planning system;

AND WHEREAS the Provincial Policy Statement, as amended by the Strong Communities (Planning Amendment) Act, 2004 came into effect March 1, 2005 with the provincial goal of creating strong communities and enhancing the quality of life for the citizens of Ontario by providing for appropriate development while protecting resources of provincial interest;

AND WHEREAS in accordance with Section 3 of the Planning Act a decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government including the Municipal Board, in respect of the exercise of any authority that affects a planning matter, shall be consistent with this Provincial Policy Statement;

AND WHEREAS contained within the Provincial Policy Statement, Section 2.3.4 Lot Creation and Lot Adjustments, the creation of new residential lots in prime agricultural areas shall not be permitted except where a residence surplus to a farming operation as a result of farm consolidation, provided that the planning authority ensures that new residential dwellings are prohibited on any vacant remnant parcel of farmland created by the severance;

AND WHEREAS identifying and reflecting true prime agricultural areas on planning documents particularly on mixed classified lands is not an accepted practice by Ministry of Agriculture, Food and Rural Affairs;

AND WHEREAS the land owners in prime agricultural designated areas have been targeted by this change in planning policy with little regard given by Government of the Province of Ontario to a true reflection of prime agricultural areas, retirement consequences or financial consequences;

AND WHEREAS by enacting this Provincial Policy Statement in the manner that Government of the Province of Ontario has chosen, they have failed to demonstrate the test of reasonableness under the notion of an effective and accountable land-use planning system.

NOW THEREFORE, BE IT RESOLVED that the Township of Stone Mills recommend that the Government of the Province of Ontario amend the Provincial Policy Statement to phase in Section 2.3.4 Lot Creation and Lot Adjustments over a five year period and provide to municipalities sensible and practicable solutions to identifying on planning documents a true reflection of prime agricultural areas;

AND FURTHER that all Ontario municipalities endorse these recommendations through their respective Councils and respond to the Associations of Municipalities of Ontario, Ministry of Municipal Affairs and Housing, Ministry of Agricultural, Food and Rural Affairs, their local Members of the Legislative Assembly

Reeve Douglas Bearance

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