SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Severance Application FL/B-07:110 Cal and Shelly Bosveld (Owner), Karl Gonnsen (Agent - Metropolitan Consulting Inc.) for Lands Located at 71 and 75 11th Concession Road East (Former Town of Flamborough) (PED08171) (Ward 15)

RECOMMENDATION:

That Council agrees to the following actions, as detailed in Report PED08171, respecting the appeal of the City of Hamilton Committee of Adjustment Consent/Land Severance Application FL/B-07:110 (Cal and Shelly Bosveld), 71 and 75 11th Concession Road East, former Town of Flamborough, as shown on Appendix “A” to Report PED08171, approved by the Committee of Adjustment but recommended for denial by the Planning and Economic Development Department:

(a) That Council of the City of Hamilton proceeds with the appeal to the Ontario Municipal Board (OMB) against the decision of the Committee of Adjustment to approve Application FL/B:07-110.

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

Tim McCabe
General Manager
Planning and Economic Development Department
EXECUTIVE SUMMARY:

Application FL/B-07:110 was considered by the City of Hamilton Committee of Adjustment on June 12, 2008. Comments to the Committee of Adjustment (Appendix “D”) 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 to the severance policies as set out in the Provincial Greenbelt Plan; the Provincial Policy Statement; the Hamilton-Wentworth Official Plan; and the Former Town of Flamborough Official Plan.

The Committee of Adjustment approved the application, subject to conditions on June 12, 2008 (Appendix “C”). Planning and Economic Development Department 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 11th Concession Road East 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 action from Council.
Proposal

The subject property is located at 71 and 75 11th Concession Road East (former Town of Flamborough). The application proposes to convey a parcel of land (severed) having a frontage of 67.1m (220’±) x 60m± (196.8’±) containing an existing two family (duplex) dwelling (known municipally as 71 11th Concession Road East) for rural residential purposes, and to retain a parcel of land (retained) having a total frontage of 52.3m± (171.5’±) and an area of 7.89 hectares± (19.5 acres±) containing an existing single family dwelling and barn (known municipally as 75 11th Concession Road East) for rural residential purposes, as shown on Appendix “B”.

The application was reviewed against all applicable planning policy documents which included the Provincial Greenbelt Plan, the Provincial Policy Statement, the Hamilton-Wentworth Official Plan, and the Former Town of Flamborough Official Plan. Planning and Economic Development Department staff recommended denial of the application on the basis of non-conformity with the above noted policy documents (Appendix “D”).

The Committee of Adjustment approved the application on June 12, 2008, subject to conditions (Appendix “C”).

ANALYSIS/RATIONALE:

The proposal for residential lot creation within Prime Agricultural Lands is contradictory to the policies of the Provincial Greenbelt Plan, Provincial Policy Statement; Hamilton-Wentworth Official Plan; Former Town of Flamborough Official Plan and the Council Adopted Rural Hamilton Official 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 to the Ontario Municipal Board (OMB).

Should the appeal be withdrawn, the application will be considered approved, subject to conditions, provided there are no other third party objections.
SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Severance Application FL/B-07:110 Cal and Shelly Bosveld (Owner), Karl Gonnsen (Agent - Metropolitan Consulting Inc.) for Lands Located at 71 and 75 11th Concession Road East (Former Town of Flamborough) (PED08171) (Ward 15) - Page 4 of 7

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: Planning and Economic Development Department 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:

Provincial Greenbelt Plan

The subject lands are designated as “Protected Countryside” and “Natural Heritage System” within the Greenbelt Plan. Policy Section 4.6 of the Plan provides the various lot creation scenarios for lands within the Greenbelt Plan Area. In particular, 4.6.3(c) and (d) relate to the severance of a residence; however, it is noted that the proposed severance is not a result of farm consolidation and is, therefore, contradictory to the policies of the Greenbelt Plan.

Furthermore, Policy 4.1.1.1 states that with the exception of those uses permitted under the general policies of Section 4.0 of this Plan, and subject to the Natural System policies in Section 3.2, non-agricultural uses are not permitted within prime agricultural areas in the Protected Countryside as designated in municipal official plans.

Lastly, as the retained lands contain an existing barn, Policy 3.1.3.4 states that new land uses and the creation of lots, as permitted by the policies of this Plan, and new or expanding livestock facilities, shall comply with the minimum distance separation formulae. The owner/applicant has not submitted any information with regards to the required minimum distance separation setbacks, but has indicated that the barn may be removed, if required.

Provincial Policy Statement (PPS)

Policy 2.3.4.3 of the Provincial Policy Statement (PPS) prohibits the creation of new residential lots in prime agricultural areas, except in accordance with Policy 2.3.4.1(c), which permits the severance of a surplus dwelling as result of farm consolidation. As
SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Severance Application FL/B-07:110 Cal and Shelly Bosveld (Owner), Karl Gonnsen (Agent - Metropolitan Consulting Inc.) for Lands Located at 71 and 75 11th Concession Road East (Former Town of Flamborough) (PED08171) (Ward 15) - Page 5 of 7

mentioned above, the proposal is not a result of farm consolidation and is, therefore, contradictory to the lot creation policies of the Provincial Policy Statement.

In addition, Policy 1.1.4.1(c) of the Provincial Policy Statement (PPS) requires that new land uses, including the creation of lots, and new or expanding livestock facilities, shall comply with the minimum distance separation formulae. Staff notes that the retained lands do contain an existing barn; however, the owner/applicant has not submitted any information with regards to the required Minimum Distance Separation. Staff does note that the owner/applicant has indicated that the barn may be removed, if required.

Lastly, staff was made aware of the Public Health Services comments at the June 12, 2008 meeting where it was recommended that the application be denied as it is below the minimum lot size for the Rural Area of 1 acre (see Page 6 of Appendix “D”). In light of this, Policy 1.1.1(c) states that healthy liveable and safe communities are sustained by avoiding development and land use patterns which may cause environmental or public health and safety concerns. As Public Health Services has identified concern with the subject proposal, the subject severance, therefore, conflicts with the above noted policy.

Hamilton-Wentworth Official Plan

The property is designated in the Hamilton-Wentworth Official Plan as “Rural Area - Prime Agricultural Lands”. Policy D-8.3 provides the various lot creation requirements for lands designated as “Prime Agricultural Lands,” similar to the Provincial Greenbelt Plan and Provincial Policy Statement, residential lot creation would only be permitted through a residence surplus as the result of a farm consolidation. As discussed in the sections above, the proposed severance is not a result of a farm consolidation and is inconsistent with the applicable lot creation policies.

Lastly, with respect to comments provided by Public Health Services, Page 6 of Appendix “D”, the proposed lot is below the minimum 1 acre lot size as required under Policy D-8.2.1. The proposal is, therefore, contradictory with the policies of the Hamilton-Wentworth Official Plan.

Former Town of Flamborough Official Plan

The subject lands are designated “Agricultural” on Schedule “B” Rural Land Use Plan in the Former Town of Flamborough Official Plan. In addition to comments provided to the Committee of Adjustment where local planning staff commented that the proposed stand alone rural residential use is not permitted within the “Agricultural” “A” designation; staff, upon further review, has provided the following additional policy review.
The lot creation scenarios provided within Section B.2.6; and B.2.8 to B.2.10, permit limited scenarios in which a residential lot may be created. However, under the applicable policy hierarchy, the Provincial Greenbelt Plan and the Provincial Policy Statement would not permit the residential lot creation scenarios as provided under Policies B.2.6; B.2.9 and B.2.10 of the Former Town of Flamborough Official Plan, as they are contrary to the policies of the applicable Provincial documents.

Therefore, the only form of residential lot creation currently still supportable by staff is the severance for a surplus farm house created as a result of a farm consolidation, as per Policy B.2.8. As the proposed severance is not a result of a farm consolidation, the application does not conform to the Former Town of Flamborough Official Plan.

Lastly, as noted above, the proposed residential lot has yet to demonstrate compliance with the requirements of the MDS formula; as per Policy B.1.5 of this Plan. The owner/applicant has indicated that the existing barn on the retained lands may be removed to address this concern.

Rural Hamilton Official Plan
(Awaiting Provincial Approval - For Information Purposes Only)

The subject lands are designated as “Rural” within Schedule “D” Rural Land Use Designations within the Rural Hamilton Official Plan. Policy F.1.13.2.3 states that severance policies F.1.13.2.1 to F.1.13.2.2 of this Plan shall also apply to lands in the Rural designation.

F.13.2.1 only permits severances in the Rural area for an Agricultural or Agricultural-related use. As the nature of the application is for Rural Residential purposes, the proposal is not a permitted form of severance.

Finally, Policy F.1.13.2.2 permits the severance of a surplus dwelling as result of a farm consolidation. As discussed above, the proposed severance is not as result of a farm consolidation and, therefore, cannot be supported.

Based on the foregoing, the proposal is not in conformity with the policies of the Rural Hamilton Official Plan as the severance for stand alone residential is prohibited and the proposed severance is not a surplus dwelling to a farm operation as a result of a farm consolidation.

Former Town of Flamborough Zoning By-law No. 90-145-Z

The subject lands are zoned General Agricultural “A” Zone in the Former Town of Flamborough Zoning By-law No. 90-145-Z. The lands to be conveyed and retained meet the minimum lot frontage and area requirements of the zone. However, Section
5.14 states that if the Regional Department of Health Services (now Public Health Services) requires a larger amount of lot area of frontage, this will be the new minimum requirement. Public Health has identified that the lot area is insufficient, as per their comments dated May 21, 2008; however, no new/revised requirements have been provided.

Lastly, Building Services has identified that insufficient information has been provided to determine if the proposed setbacks are compliant with the zone provisions and whether or not the proposed property lines are in compliance with the spatial separation requirements of the Ontario Building Code for the existing dwellings and septic systems.

**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
Public Health has identified a concern.

Environmental Well-Being is enhanced. □ Yes ☑ No
No change as result of proposed development.

Economic Well-Being is enhanced. □ Yes ☑ No

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

:AC
Attachs. (4)
COMMITTEE OF ADJUSTMENT

NOTICE OF DECISION

APPLICATION FOR CONSENT/LAND SEVERANCE

APPLICATION NO. FL/B-07:110
SUBMISSION NO. B-110/07

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 numbers 71 and 75 11th Concession Road East, formerly in the Town of (East) Flamborough, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION, AS AMENDED, by the agent Karl Ganmen on behalf of the ownersCel and Shelly Bosved, for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the conveyance of a parcel of land measuring 67.1m (220') x 60m (196.8') containing an existing two family (duplex) dwelling (known municipally as 71 11th Concession Road East) for rural residential purposes, and to retain a parcel of land having a total frontage of 52.3m (171.5') and an area of 7.89 hectares (19.5 acres) containing an existing single family dwelling (known municipally as 75 11th Concession Road East) and barn for rural residential purposes.

THE DECISION OF THE COMMITTEE IS:

That the application be APPROVED for the following reasons:

1. This is an unusual situation and having regard to the intent of the Greenbelt Plan, this land is not prime agricultural land and is in fact aggregate. Based on the evidence presented by the applicant and confirmed by Committee members, there is no possible agricultural use.

2. There are two homes, which staff confirm were both likely built legally (although no records available prior to mid 1990's). The second house perhaps may be used for a farm help house or agricultural use in the past, but was also apparently used as a separate residence.

3. The Committee having regard to the evidence is satisfied this is a unique situation and the decision was a practical resolution.

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/applicant shall satisfy ALL requirements financial and otherwise of the City of Hamilton, Planning and Economic Development Department, Development Planning (West) Division.

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

3. The owner/applicant shall apply for and receive final approval of a Zoning By-law Amendment to permit a duplex as a second dwelling on the subject property to the satisfaction of the City of Hamilton, Planning and Economic Development Department, Development Planning (West) Division.

4. The owner/applicant shall submit survey evidence that the existing buildings conform to the requirements of the Zoning By-Law or alternatively apply for and receive final approval of any necessary variances from the requirements of the Zoning By-Law as determined necessary by the Planning and Economic Development Department (Building Services Division).
5. The owner/applicant shall submit survey evidence that the proposed property lines will comply with the spatial separation requirements of the Ontario Building code for the existing dwellings and septic systems, to the satisfaction of the Planning and Economic Development Department (Building Services Division).

6. That the owner submit to the Committee of Adjustment Office an administration fee of $15.00, payable to the City of Hamilton, to cover the cost of setting up a new tax account for the newly created lot.

DATED AT HAMILTON this 12th day of June, 2008.

M. Dudzik, Chairman

C. Lewis

D. Servetuk

L. Tow

L. Gaddye

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS June 19th, 2008.
HEREIN NOTED CONDITIONS MUST BE MET WITHIN ONE (1) YEAR OF THE DATE OF THIS NOTICE OF DECISION (June 19th, 2009) 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 July 9th, 2008.

NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.
May 29th, 2008

CONSOLIDATION REPORT
SEVERANCES

The attached comments have been reviewed with regard to Committee of Adjustment Severance File **FL/B-07:110 AMENDED (71 & 75 11th Concession Road East, Flamborough)** and the following is submitted:

**Should the Committee grant the severance, an approval should be subject to the following conditions:**

1. The owner/applicant shall satisfy **ALL** requirements financial and otherwise of the City of Hamilton, Planning and Economic Development Department, Development Planning (West) Division.

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

3. The owner/applicant shall apply for and receive final approval of a Zoning By-law Amendment to permit a duplex as a second dwelling on the subject property to the satisfaction of the City of Hamilton, Planning and Economic Development Department, Development Planning (West) Division.

4. The owner/applicant shall submit survey evidence that the existing buildings conform to the requirements of the Zoning By-Law or alternatively apply for and receive final approval of any necessary variances from the requirements of the Zoning By-Law as determined necessary by the Planning and Economic Development Department (Building Services Division).

5. The owner/applicant shall submit survey evidence that the proposed property lines will comply with the spatial separation requirements of the Ontario Building code for the existing dwellings and septic systems, to the satisfaction of the Planning and Economic Development Department (Building Services Division).

6. That the owner submit to the Committee of Adjustment Office an administration fee of $15.00, payable to the City of Hamilton, to cover the cost of setting up a new tax account for the newly created lot.
May 29th, 2008

AMENDED
FL/B-07:110 (71 & 75 11th Concession Road East, Flamborough)

PLANNING and DEVELOPMENT DEPARTMENT

Development Planning – West:

The applicant is proposing to divide the existing agricultural property into two lots.

Staff has reviewed the policy document history regarding the former Town of East Flamborough and have determined that the existing homes are not of a legal non-conforming status. As such, the application is subject to the criteria for severance/subdivision as provided under the Section 51 of the Planning Act, R.S.O. 1990, c. P.13. Staff has provided the following review in light of these criteria below.

Greenbelt Plan:

The subject lands are designated as “Protected Countryside” and “Natural Heritage System” within the Greenbelt Plan. Staff does note that the “Rural Hamilton Official Plan” shows the subject lands being designated as “Rural” and not “Prime Agricultural Lands”; however Policy 3.1.1 of the Plan clearly states that Prime agricultural areas are those lands designated as such within Municipal Official Plans.

As the “Rural Hamilton Official Plan” has yet to be approved by the Province of Ontario, the existing “Hamilton-Wentworth Official Plan” remains in full force and effect. It is therefore the opinion of staff that as the subject lands are designated as “Prime Agricultural Lands” within the Hamilton-Wentworth Official Plan and subsequently the subject proposal would be contradictory to the lot creation policies as provided in Section 4.6 of the Plan.

In particular, the only form of residential severance permitted by the Plan is a surplus dwelling as result of farm consolidation; this is not the scenario before the Committee. The applicant/agent has contended that the Plan is silent on the subject scenario to facilitate the proposed lot creation. Although the Plan may be silent on the particulars of this application, there remains no policy to allow for this form of severance. Similar to a zoning by-law and its permitted uses, silence on a use does not lend to permission of that use; likewise silence on this form of lot creation, does not provide for permission of this form of lot creation. It is Staff’s opinion that the proposed severance is in conflict with the policies of the Provincial Greenbelt Plan.

Provincial Policy Statement (PPS):

As mentioned above the Official Plan currently in force and effect is the “Hamilton-Wentworth Official Plan” which designates the subject lands as Prime Agricultural Lands. Policy 2.3.4.3 clearly states that the creation of new residential lots in prime agricultural areas shall not be permitted except through a residence deemed surplus as result of a farm consolidation. The proposal is therefore contrary to the lot creation policies of the Provincial Policy Statement (PPS).
The applicant/agent has also contended that the lot creation is not a lot for a new dwelling. However, the policy clearly states creation of a new residential lot is prohibited, whether it has an existing home on the proposed lot or not. In the opinion of staff the proposal is still creating a new residential lot. Therefore, based on the foregoing, it is the opinion of staff the proposal is in conflict with the policies of the Provincial Policy Statement (PPS).

**Hamilton-Wentworth Official Plan:**

The subject lands are designated as “Rural – Prime Agricultural Lands” within the Hamilton-Wentworth Official Plan. Staff notes that the applicant/agent has contested whether these lands are of a viable nature and do agree that the lands may not be of prime agricultural capability as indicated by the City of Hamilton LEAR study. However, as the lands are currently designated “Prime Agricultural Lands” and as the Greenbelt Plan and Act require that all official plans be in conformity with the Greenbelt Plan. It is the opinion of staff that the subject application cannot be supported.

The hierarchy of policies places the Provincial Plans (Greenbelt Plan) and Policies (PPS) as the first level of development review. As discussed above, it is the opinion of staff that the subject proposal is in conflict with both Greenbelt Plan and the Provincial Policy Statement (PPS) and subsequently contrary to the policies of the Hamilton-Wentworth Official Plan.

**Rural Hamilton Official Plan**

Staff notes, as documented by the applicant/agent, the “Rural Hamilton Official Plan” will re-designate the subject lands to a “Rural” Designation. The Province of Ontario has yet to approve the Plan and subsequently the associated mapping/schedules. The Rural Hamilton Official Plan is therefore not in full force and effect.

Furthermore, should the “Rural Hamilton Official Plan” be approved by the Province of Ontario, the subject proposal would be reviewed against the lot creation policies of the “Rural Hamilton Official Plan.” In particular, Policy F.1.13.2.3 requires that lot creation in the “Rural Designation” be subject to Policy Section F.1.13.2.1 and F.1.13.2.2 which only permits lot creation for agricultural uses, agricultural-related uses and an existing farm dwelling that is a residence surplus to a farming operation as a result of a farm consolidation. The subject proposal would not meet the new lot creation policies of the “Rural Hamilton Official Plan”. Therefore, it is Staff’s opinion that the subject application be denied as it is contrary to the existing policy regime and would also be in conflict with the future “Rural Hamilton Official Plan” lot creation policies.

**The Town of Flamborough Official Plan**

The subject property is designated as “Agricultural” in the Town of Flamborough Official Plan to which the proposal does not conform.
Policy B.2.1 states, “The uses permitted in areas designated “Agriculture” on Schedule “B” shall be agricultural operations, including cultivated field crops, animal husbandry, perennial forge crops, greenhouses, nurseries, forestry, and reforestation projects, and fish and wildlife management or similar uses.” Residential uses are not permitted as a principal use in this the Agricultural designations only ancillary to a permitted use.

Policy B.2.2 states, “It is the policy of Council to encourage expansion of agricultural operations, as well as the continued working of all farm lands.” As the proposal is to remove land from possible production the proposal does not conform to this section of the Official Plan.

Policy B.2.8 states, “A severance may be considered in the case where a surplus farm house is created as a result of a farm consolidation.” As the second dwelling on the subject property was not created as a result of a farm consolidation and is in fact an illegal second dwelling unit, the proposed severance does not conform to this section of the Official Plan.

The Town of Flamborough Zoning By-law No. 90-145-Z

The subject property is zoned Agricultural “A” Zone in the Town of Flamborough Zoning By-law, to which a second dwelling unit is not a permitted use.

The proposed lands to be severed and lands to be retained meet the minimum lot area requirement of 2,000 sq. m. and the minimum lot frontage requirement of 30m, so long as no livestock is housed on the lands to be severed or lands to be retained.

Recommendation:

Staff recommends that the proposed severance be **Denied** as the proposal does not conform to the Provincial Greenbelt Plan, the Provincial Policy Statement, the Hamilton-Wentworth Official Plan, and the Town of Flamborough Official Plan.

Note:

The applicant has indicated that the 2nd dwelling unit currently functions as a duplex and does not conform to the uses permitted in the Agricultural “A” Zone. Therefore, it is recommended that the applicant cease using the 2nd dwelling as a duplex or apply for and receive approval of a Zoning By-law Amendment to permit a duplex as a second dwelling on the subject property irregardless of Committee’s decision on the proposed severance application.

**Building Services Division:**

This property is currently zoned Agricultural – A and may contain some Conservation Management –CM lands. Confirmation from Conservation Halton should be obtained to ensure that their regulations are maintained.
The use of two dwellings on a lot is not a permitted use in the current zoning. The use as a duplex (two family dwelling) is not a permitted use in the current zoning district. The conversion to a duplex contravenes the previous and present Zoning By-law.

The lands were zoned as Agricultural under the previous Zoning By-law 76-65-EF-Z enacted on July 3, 1973. The previous zoning did not permit duplexes, and did not permit two dwellings on one lot.

There is a previous Zoning By-law for the former municipality of East Flamborough. This previous By-law 1341 was enacted on February 3, 1958. This By-law did not contain provisions that would permit two dwellings on one lot.

Our Division has no records that would confirm the use of two dwellings on one property would be permitted.

The creation of the lots would have to comply with the regulations of today’s By-law, if approved. The minimum lot frontage and area for this type of use is 30m of frontage and 2000m² of lot area. Section 5.14 states that if the Regional Department of Health Services requires a larger amount of lot area or frontage, this will be the new minimum requirement. The plans provided do not show the setbacks of the existing buildings to the proposed property lines. The minimum Zoning By-law requirements must be adhered to. Insufficient information has been provided to determine if the proposed property lines will comply with the spatial separation requirements of the Ontario Building Code for the existing dwellings and septic systems.

**Development Engineering – West:**

No comment.

**Parking Operations:**

No concerns.

**PUBLIC WORKS DEPARTMENT**

**Traffic, Engineering and Operations Division:**

No comment.

See attached for additional comments.
The City of Hamilton

Public Health Services
Health Protection Division
1 Hughson Street North, 3rd Floor
Hamilton, ON L8R 3L5

Tel: (905) 546-3570
Fax: (905) 546-2787

Report on Applications for Land Severance

Date: May 21, 2008

File No.: LD: FL/B-07:110; HU: EF-08:13

To: Carol Connor
Secretary-Treasurer
Committee of Adjustment (City of Hamilton)
Fax: (905) 546-4202

Re: 71 and 75 Concession 11th Road East
Former Town of Flamborough (East)
Now City of Hamilton

Date of Inspection: May 20, 2008

Comments:

Public Health Services does not support the above-mentioned land severance as the proposed application for a severance would create an undersized lot in terms of the Official Plan (Section 8.2.1.) which requires that all lots maintain a minimum lot size of .4 hectares (approximately one acre). The severed parcel must be increased in area to meet the minimum requirements of one acre.

Recommendations:

Public Health Services of the City of Hamilton will not approve the application for severance as submitted due to the fact that the newly created severed lot would be less that one acre in size.

For

Medical Officer of Health
Public Health Services

Dan Nagel
Public Health Inspector
Dan Nagel, C.P.H.I.(C)

An Accredited Teaching Health Unit Affiliated with McMaster University and the University of Guelph
BY FAX AND MAIL

Ms Carol Connor
Secretary-Treasurer, Committee of Adjustment
City of Hamilton
71 Main Street West
Hamilton, ON L8P 4Y5

Dear Ms Connor:

Re: 71 Eleventh Concession (RF)
City of Hamilton
Severance Application FL/B-07:110

Staff of Conservation Halton have reviewed the above noted application as per the following checklist, which includes: Conservation Halton's regulatory responsibilities; the Memorandum of Understanding (MOU) between MNR, MMAH and Conservation Authorities with respect to providing the provincial interest comments related to natural hazards; Conservation Halton's Level II Agreement with the Department of Fisheries and Oceans to review applications pursuant to Section (35) of the Fisheries Act; the MOU between the City of Hamilton and Conservation Halton; and, the Hamilton Harbour Remedial Action Plan Agreement (only pertains to those applications that are within the Hamilton Harbour watershed). The following comments relate strictly to this specific application. Additional items not marked as "applicable" may apply to future applications:

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<td>Endangered and Threatened Species</td>
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<td>Other</td>
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<td>Greenbelt Plan</td>
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Background
The purpose of this application is to permit the conveyance of a parcel of land (34 metres x 60 metres) containing one single detached dwelling for residential purposes (i.e., severed parcel), and to retain a parcel of land having a frontage of 85 metres and an area of 8.10 hectares containing an existing barn and two family, duplex dwelling for residential and agricultural purposes (i.e., retained parcel).

Conservation Halton Regulation (Ontario Regulation 162/06)
The subject property neighbours a Provincially Significant Wetland and Bronte Creek. Conservation Halton regulates areas that are affected by flooding and erosion hazards, wetlands, other hazardous lands and lands adjacent to these features/functions. In this case, the area of land adjacent to the wetland (120 metres from the limit of the wetland) and adjacent to Bronte Creek (15 metres from the limit of the flood plain or meander belt, whichever is greatest) is considered to be within Conservation Halton’s regulated area. For information purposes, Conservation Halton staff has attempted to outline, on the attached plan, the portion of the subject property that are subject to Ontario Regulation 162/06.

Staff understands that structures/dwellings currently exist on the subject property (proposed retained and severed parcels) and that no new development is proposed at this time. By copy of this letter, the applicant is advised that any development, including structures, grading and filling, within Conservation Halton’s regulated area would require Conservation Halton’s permission, pursuant to Ontario Regulation 162/06. Any works proposed on the subject properties will need to conform to the policies of Conservation Halton.

City of Hamilton MOU

Significant Areas of Natural and Scientific Interest
The subject property is located within the boundary of the Fre lolton Esker Provincial Earth Science Area of Natural and Scientific Interest (ANSI). Policies 2.1.4 (c) and 2.1.6 of the PPS state that development and site alteration will not be permitted within or adjacent to significant ANSI unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions.

Staff understands that no new structures are proposed for the subject property. Consequently, staff believes that it is unlikely that there will be negative impacts on the natural features as a result of the approval of the above-referenced application.

Other

Greenbelt Plan
The subject property appears to be located in the Natural Heritage System designation of the Greenbelt Plan. Staff recommends that the City of Hamilton confirm that the proposal meets the requirements of this Plan.

Conclusion
Staff has no objection to the approval of the above-noted consent application. However, the applicant is strongly advised that permission from Conservation Halton, pursuant to Ontario Regulation 162/06, may be required for future development (structures, grading and filling) on the subject property.

We trust the above is of assistance. If you have any further questions, please contact the undersigned at Extension 225.

Yours truly,

Kellie McCormack
Environmental Planning Technician, Watershed Management Services

Cc: Karl Gonsen, Agent (fax 905-637-2926)