Committee Direction:

At the May 19, 2009, Economic Development and Planning Committee Meeting, Committee referred Report PED09132 (see Appendix “B”) back to staff, with direction for staff and the applicant to meet to further consider the applicant’s claim that the use is Legal Non-Conforming, and to review potential alternative sites for the top soil and trucking business. Staff was directed to report back no later than October, 2009.

At the October 20, 2009, Economic Development and Planning Committee Meeting, Committee approved the new date to report back, being February 16, 2010. Subsequently, at the March 2, 2010, Economic Development and Planning Committee Meeting, the new date to report back was approved, being April 20, 2010.

Information:

The application was deferred to address the following issues raised by both staff and the agent at a Public Meeting held on May 19, 2009. Staff was directed to consider the applicant’s claim that the use should be considered Legal Non-Conforming, and to review potential alternative sites for the top soil and trucking operation.
In awaiting the supporting documentation from the applicant to consider the request for Legal Non-Conforming status, and subsequent scheduling for a meeting regarding the review of potential alternative sites, staff was unable to report back to Committee by the original requested date of October 2009. Staff has now addressed the matters requested by Committee, and provides the following information:

**Review of potential alternative sites for the business:**

The agent, Mr. Ed Fothergill, and the Owner, Mr. Jim Coverdale, were invited to a meeting with Economic Development staff to explore potential alternative locations for the relocation of the topsoil and trucking operation within the City of Hamilton. Based on the criteria presented by the applicant, the ideal location, in the applicant’s opinion, would be to remain within rural Flamborough in close proximity to the current operation.

It was identified to the applicant that there are no locations in rural Flamborough that would permit such an operation due to the limitations of the Provincial Greenbelt Plan. In light of this, staff presented locations within the City of Hamilton that would have appropriate zoning and would be suitable for the proposed operation.

In review of these locations, the applicant contended that although appropriate sites may be in existence, the recommended commercial/industrial lands were not within the applicant’s financial plan. In light of this, the meeting concluded with the Agent, indicating that they will continue to explore the “Legal Non-Conforming Status” before finalizing a decision.

Since this meeting, Mr. Fothergill has been in contact with the Economic Development Division, requesting that the City document that a suitable parcel of land for this company to relocate is not available. As mentioned above, it is the opinion of staff that alternative sites are available for such an operation; however, these parcels do not meet the applicant’s financial or locational preferences. Based on the foregoing, the Economic Development and Real Estate Division is not prepared to issue the requested statement/memorandum, as it is the opinion of staff that this is not accurate.

**Legal Non-Conforming Status:**

Mr. Ed Fothergill contacted the Building Services Division for historical records from the Municipal Licensing Division and Committee of Adjustment on September 21, 2009. The agent was provided with records from Municipal Licensing, and directed to inquire with the Committee of Adjustment for the remaining records; however, it is noted that no such request was ever filed with Committee of Adjustment staff.

On September 28, 2009, the agent, Mr. Ed Fothergill, submitted information and a request to the Building Services Division for the designation of Legal Non-Conforming regarding the existing topsoil and trucking business.
The Building Services Division completed the review, and confirmed via memorandum dated October 16, 2009 (attached as Appendix “A”), that the "legal use of the property has not changed as a result of the information provided". To date, no further correspondence or submissions have been received from the proponent regarding the Legal Non-Conforming status.

It should be noted that the applicant’s request for Legal Non-Conforming Status does not affect the rational/basis for the recommendation of denial regarding the proposed Zoning By-law Amendment.

Conclusion

Based on the analysis in the original report presented to the Economic Development and Planning Committee, PED09132 (attached as Appendix “B”), and the subsequent information detailed above, staff maintains the recommendation for denial of the subject application.

It should be noted that Committee’s/Council’s decision on the subject application does not preclude the proponent from pursuing Legal Non-Conforming status, as it falls under a separate section of the Planning Act and is to be reviewed and processed separately from that of the Zoning By-law Amendment application.

Appendices/Schedules:

Appendix “A”: Building Services Division comments regarding Legal Non-Conforming Designation.


:AC
Attachs. (2)
October 16, 2009

Jason Thompson
Senior Project Manager
Development Planning - West Section
Planning Division
Planning and Economic Development Department

Attention: Alvin Chan

Re: Zoning District: A - Agricultural and CM - Conservation Management
File Number: ZAC-07-70
Address: 955 HWY 97, FLAMBOROUGH

The above, under cover of your letter dated October 5, 2009, has been examined.

COMMENTS:

1. This is a review of the additional information that has been provided by the applicant and owner. This additional information is being provided for the purpose of verifying the status of a past use on this property.

2. The information provided includes an affidavit from Jim Coverdale, together with several letters that are not sworn documents.

3. The information has been provided as a rebuttal of information contained within the City of Hamilton's records as well as an agreement registered on title regarding the use of the property.

4. The facts within the affidavit indicate that a business commenced on this property in 1964 as a truck delivery service. One concern is that the affidavit states that the use was operating from 944 and not 955 Regional Road 97.

5. There are other inconsistencies within the affidavit that do not support the continuation of the use at this property. It is noted that at several times throughout the years that the business ceased operating in the identical manner at this address. The status, whether it was legally established non-conforming or otherwise, changed without the required Committee of Adjustment approvals. The status of the original legal non-conforming use, if it was applicable, would be lost as a result.
6. The applicant has indicated that the business started as a haulage type business then expanded and altered over the years to that of a contractors depot and then to that of the current top soil business. These changes were never approved through the proper processes and affect the status of the proposed/existing business. The legal non-conforming use, if it was applicable, was lost through these changes.

7. The use of the property appears to have stopped operating from this address in 1985 as stated in the affidavit then restarted in 2006.

8. The aerial photography clearly shows that the property was agricultural in 2002. The photographs then show that the use started in and around 2005, which is the time frame that the affidavit states the use did not exist at this property.

9. There is conflicting information regarding the use of the property provided from this owner over the years. Our Division's records indicate that a building permit (02-196535) was issued in 1992 to Mike Coverdale, indicated as owner on the permit application. The owner of this property swore under oath that the building was to be used for agricultural purposes.

10. Another example of the conflicting evidence is the sworn statement included as part of Committee of Adjustment application FL/B-04:39 by the owner of the property that indicates that the lands are used as farm land.

11. No statement or information refuting the information regarding the registered agreement made by the owner of the property in 1989 has been provided.

12. A letter on file from the law firm Yachetti, Lanza & Restivo dated November 22, 2005 indicating that they are acting on the behalf of the owner, states that no commercial use is located or operating from this address. The letter clearly indicates that a top soil business is the only business use located at this property. This directly contradicts the affidavit submitted by Mr. Coverdale.

13. It is noted that the supporting letters from area residents and businesses indicate that the use moved from this site and relocated back to this site. This would constitute a loss of any legal status the use may or may not have enjoyed at this property.

14. Our Division's opinion on the legal use of the property has not changed as a result of the information provided.

Yours truly

[Signature]

for the Manager of Building Engineering and Zoning
SUBJECT: Application for a Zoning By-law Amendment for Lands Located at 955 Regional Road 97 (Flamborough) (PED09132) (Ward 14)

RECOMMENDATION:

That Zoning Application ZAC-07-070, James and Michael Coverdale, Owners, for a change in zoning from the Agricultural “A” Zone to an Agricultural “A” Zone, Modified, to permit a top soil operation and a separate truck depot, for lands located at 955 Regional Road 97, (Flamborough), as shown on Appendix “A” to Report PED09132, be denied on the following basis:

(a) That the proposed uses are contrary to the Provincial Greenbelt Plan and Provincial Policy Statement, as they are not considered an Agricultural Use, and are neither a use secondary to an agricultural operation nor an agriculturally related use.

(b) That the proposed uses do not conform to the Hamilton-Wentworth Official Plan and the Flamborough Official Plan.

Tim McCabe
General Manager
Planning and Economic Development Department
SUBJECT: Application for a Zoning By-law Amendment for Lands Located at 955 Regional Road 97 (Flamborough) (PED09132) (Ward 14)
- Page 2 of 11

EXECUTIVE SUMMARY:

The purpose of the application is for a change in zoning to permit two distinct uses: a top soil operation and a truck haulage depot established in contravention of the Zoning By-law. The application cannot be supported as the proposed uses are not considered agricultural in nature and are, therefore, contrary to the policies of the Provincial Greenbelt Plan, Provincial Policy Statement, Hamilton-Wentworth Official Plan and Flamborough Official Plan.

BACKGROUND:

Proposal

The subject lands have an area of 32.7 hectares, with a frontage of approximately 152.36 metres on Regional Road 97, within the former Town of Flamborough (see Appendix “A”). A large portion of the subject lands has been staked by staff from both the City of Hamilton and Halton Conservation Authority, and has been identified as a wetland, and is within Environmentally Significant Area (ESA) #17 Beverly Swamp in the Hamilton-Wentworth Official Plan (Appendix “B”). The westerly portion of the subject lands is designated as “Prime Agricultural Lands”, and the easterly portion is designated “Rural” in the Hamilton-Wentworth Official Plan, Map 2.

The purpose of the application is for a modification in zoning, to legalize both an existing top soil operation and trucking depot located on the subject lands at 955 Regional Road 97 (see Appendix “A”). The two proposed uses are independent operations:

Top Soil Operation: This operation consists of stockpiling of aggregate, top soil and other landscaping materials to be sold and trucked off-site. As indicated by the agent, the operation serves beyond the Rural Area and does not employ resources that are found on the subject lands, but rather stockpiled from other locations.

Truck Haulage Depot: This operation comprises a fleet of 25 trucks stored on the subject lands for bulk haulage of various materials. The operation entails empty trucks departing in the morning and returning empty upon completion of all deliveries. Although there is a crossover between the two operations whereby stockpiled aggregate/materials are trucked from this location, the trucking operation will and has primarily served as a truck haulage depot for the larger bulk haulage operation.

The City of Hamilton Building Services Division has reviewed the subject application and has determined that the existing operations found on the subject lands (Top Soil and Truck Depot) are not considered legal non-conforming uses. As such, Section 4.5, Existing Uses, of the Greenbelt Plan does not apply. Accordingly, the proposed development must be evaluated against both the Prime Agricultural and Rural Policies of the Provincial Greenbelt Plan and the Provincial Policy Statement.
SUBJECT: Application for a Zoning By-law Amendment for Lands Located at 955 Regional Road 97 (Flamborough) (PED09132) (Ward 14)

In consultation with the Ministry of Municipal Affairs and Housing, the proposed uses do not represent a form of agriculture as no cultivation of the land is occurring on site. Therefore, it is the opinion of staff that the proposed uses do not conform to the policies of the Provincial Greenbelt Plan, Provincial Policy Statement, Hamilton-Wentworth Official Plan, and the Town of Flamborough Official Plan.

Owner/Applicant: James and Michael Coverdale
Agent: Fothergill Planning and Development Inc.
Location: 955 Regional Road 97 (Flamborough)

Description:
Frontage: 152.36 metres
Depth: 1,009.0 metres
Area: 32.7 Ha

Details of Submitted Application

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></td>
<td>Top Soil and Trucking Depot</td>
<td>Agricultural “A” Zone and Conservation Management “CM” Zone</td>
</tr>
</tbody>
</table>

Surrounding Lands

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<tr>
<th>North</th>
<th>Vacant - Agricultural and Woodlot (ESA #17)</th>
<th>Agricultural “A” Zone and Conservation Management “CM” Zone</th>
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<tbody>
<tr>
<td>South</td>
<td>Single Detached Dwellings and Agricultural Operations</td>
<td>Agricultural “A” Zone and Conservation Management “CM” Zone</td>
</tr>
<tr>
<td>East</td>
<td>Single Detached Dwellings and Agricultural Operations</td>
<td>Agricultural “A” Zone and Conservation Management “CM” Zone</td>
</tr>
<tr>
<td>West</td>
<td>Commercial</td>
<td>Agricultural “A” Zone and Conservation Management “CM” Zone</td>
</tr>
</tbody>
</table>
SUBJECT: Application for a Zoning By-law Amendment for Lands Located at 955 Regional Road 97 (Flamborough) (PED09132) (Ward 14)

ANALYSIS/RATIONALE:

1. The proposal cannot be supported for the following reasons:

i) The proposed uses do not conform to the policies of the Provincial Greenbelt Plan, are inconsistent with the policies of the Provincial Policy Statement, and do not conform with the Hamilton-Wentworth Official Plan and the Town of Flamborough Official Plan;

ii) The type and form of development proposed is incompatible with existing and planned uses in the immediate area, in particular, the adjacent residential uses; and,

iii) The proposal does not represent good land use planning.

2. The purpose of the application is for a change in zoning to permit the continued use of the lands located at 955 Regional Road 97 for a Top Soil Operation and a Truck Depot (Appendix “A”). Staff, in review of the application, has concluded that both the top soil operation and truck depot are not a form of agriculture, nor are they agriculturally related or secondary to an agricultural operation located on the subject lands. Therefore, the application is contrary to the uses permitted in the “Prime Agricultural and Rural Areas,” as stipulated within the Provincial Greenbelt Plan.

3. 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 Greenbelt Plan, staff takes direction from the definitions provided within the Provincial Greenbelt Plan which defines agriculture, agriculturally related, and secondary uses as follows:

“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.

Agriculturally 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.
SUBJECT: Application for a Zoning By-law Amendment for Lands Located at 955 Regional Road 97 (Flamborough) (PED09132) (Ward 14)

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 trucking operation involves the use of the subject lands strictly as a storage facility and primarily hauls a variety of commodities. On occasion, aggregate/topsoil is hauled to/from the site, but the trucking operation is not directly related to a farm operation. Therefore, the proposed uses are not related to an agricultural operation, nor any renewable/non-renewable resources found on site, as required by the Provincial Greenbelt Plan.

Furthermore, based on information provided in the application form, the proposed trucking operation has been shown to serve beyond the Rural Area, and is of a large scale employing 25 trucks.

The proposed uses are not considered agricultural as they do not cultivate or use the lands in an agricultural manner. Accordingly, the proposed uses are contrary to the definitions provided by the Greenbelt Plan.

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.

4. The proposed uses have been reviewed with regard for the policies within the "Rural Hamilton Official Plan", which has received Provincial Approval, but is currently under appeal to the Ontario Municipal Board. The following comments are, therefore, provided for information purposes only.

The subject lands are designated as "Protected Countryside" and "Natural Heritage System" on Schedule "B", and designated as "Rural" on Schedule "D" of the Rural Hamilton Official Plan. The Rural designation permits any uses permitted within the "Agriculture" Designation.

The type and form of development proposed does not conform, and is inconsistent with the intent of the Rural Hamilton Official Plan as the operations are not agricultural in nature, nor agriculturally-related, or secondary to an agricultural operation.

Lastly, the "Rural" designation permits resource based commercial/industrial uses; however, as the use is not directly related to, nor require a location on or in a close proximity to a rural resource, in that the resources/commodities are being trucked and stockpiled from across the City of Hamilton and not the Rural Area, the proposal is inconsistent with the Rural Hamilton Official Plan.
SUBJECT: Application for a Zoning By-law Amendment for Lands Located at 955 Regional Road 97 (Flamborough) (PED09132) (Ward 14)

5. One letter of concern from the Public was received in response to the preliminary circulation of the application. (Appendix “C”). The issues/concerns identified relate to: the types of materials to be stockpiled; the history of the operations and how they came about; the preservation of the Conservation Management areas; possible nuisances as a result of the operations; alternative locations; taxation of the property; and enforcement activity on the subject lands.

In light of the letters received, staff has confirmed that there are no chemicals to be stored on site, and the proposed operation will only stockpile topsoil and aggregate with the inclusion of an area for parking of an average of 25 trucks associated with the truck depot.

The Municipal Property Assessment Corporation, MPAC, and the City of Hamilton Taxation Division were circulated, but no comments or concerns were received as a result of the circulation. The property is currently being assessed and taxed as a “Farm” and “Residential” by the City of Hamilton Taxation Department.

Staff notes that as indicated by the Applicant, both operations were relocated from their original location in an “IND” Zone - Industrial Zone within the Township of Puslinch, which permitted such uses, in particular, “a building or construction contractor’s yard and a transport terminal” (see Appendix “D”).

The operations according to the applicant have been established on the subject lands since 1985; however, Building Services staff has deemed the uses to be illegal in nature as the existing Agricultural “A” Zone does not permit such uses. An action request was received by the Municipal Law Enforcement Section in May 2007, whereby the proposed uses were deemed to be in contravention of the By-law. The applicant submitted the subject application in September of 2007, in light of the action request.

The application has been in process with a lengthy period of review dedicated to natural heritage issues; in particular, the required staking and surveying by Halton Conservation and City of Hamilton Natural Heritage staff in order to determine the area subject to the application. Staff notes that alternative locations are available within the City of Hamilton for such uses.

With regards to the Natural Environment and resulting truck traffic of the operations, the applicant has proposed an amendment to the area intended to accommodate the proposed operations, while maintaining the remainder of the lands as Conservation Management “CM” Zone.
SUBJECT: Application for a Zoning By-law Amendment for Lands Located at 955 Regional Road 97 (Flamborough) (PED09132) (Ward 14)

The proposal would utilize the existing access, and would require Site Plan Control to establish the location of the operation along with screening and any other required mitigation measures. City of Hamilton Traffic Engineering and Operations Section has no comments or concerns with the proposed uses, as Regional Road 97 is a designated truck route.

6. Should Committee/Council approve the subject application, it is noted that any development within the Regulated limit of the Halton Conservation Authority, including the spill zone as identified on the Survey/Plan (prepared by A.T. McLaren Ltd., dated December 23, 2008 - see Appendix "B"), will require an Ontario Regulation 126/06 Permit.

ALTERNATIVES FOR CONSIDERATION:

If this application is denied, the applicant can use the subject property for the range of uses that are currently permitted under the existing Agricultural "A" Zone and Conservation Management "CM" Zone.

Should the application be approved as proposed, Council must deem the subject 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 Town of Flamborough Official Plan, along with a site-specific zoning to recognize the existing uses and to rezone the natural heritage features found on site, would be required to facilitate this proposal.

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 a change in Zoning.

POLICIES AFFECTING PROPOSAL:

Greenbelt Plan

The subject lands are designated as "Prime Agricultural Lands and Rural Lands", within Map 2 of the Hamilton- Wentworth Official Plan, and similarly "Rural and Agriculture" on Schedule B - Rural Land Use Plan of the Former Town of Flamborough Official Plan.

The “Rural Area” policies (Section 3.1.4.1) of the Greenbelt Plan recognize existing uses and permit the continuance and/or expansion of these uses subject to the Existing Use policies of Section 4.5.
SUBJECT: Application for a Zoning By-law Amendment for Lands Located at 955 Regional Road 97 (Flamborough) (PED09132) (Ward 14) - Page 8 of 11

However, as determined by City of Hamilton Building Services staff, the existing operations on the subject lands are not legal non-conforming uses and, therefore, are not recognized uses as termed by the Greenbelt Plan. Accordingly, any proposed re-zoning must be reviewed and be consistent with the applicable policy documents.

Policies 3.1.3 and 3.1.4 of the Provincial Greenbelt Plan permit agricultural, agriculture-related, and secondary uses. However, in consultation with Ministry of Municipal Affairs and Housing staff, the proposed uses (Top Soil operation and Truck Depot) were not deemed to be consistent with the definition of “agricultural, agriculture-related and/or secondary uses”, as described in the Analysis/Rationale section of this report.

Lastly, as the top soil operation does not utilize the subject lands in an agricultural capacity, the proposed top soil operation is contrary to the uses permitted in the “Prime Agricultural and Rural Areas”, as stipulated within the Provincial Greenbelt Plan. Based on the foregoing, the proposed uses are deemed to be in contravention of the policies of the Greenbelt Plan.

**Provincial Policy Statement**

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Policy 2.3.3 permits agricultural uses, secondary uses, and agriculture-related uses within the Prime Agricultural Area.

The proposed development is not a form of agriculture, nor is it agriculturally-related or secondary to a farm operation and, is therefore, contrary to Policy 2.3 of the Provincial Policy Statement. As such, the proposal is inconsistent with the policies of the Provincial Policy Statement.

**Hamilton-Wentworth Official Plan:**

The subject property is designated as “Prime Agricultural and Rural Area” within the Hamilton-Wentworth Official Plan. The proposed use is not considered to be agriculture, agriculture-related, or a secondary use. Policy C-3.2.3.1 states that:

“the Region will consider in the Rural Area, as shown on Map No. 1, individual commercial and industrial uses only if they are directly related to and serve the agricultural community or directly utilize the natural resources of the Rural Area.

Such uses...will be directed away from prime agricultural land, and where possible, will be located within designated Rural Business Parks or Rural Settlement Areas.”

As the subject proposal is for individual commercial uses, which do not directly relate nor directly serve the rural community or utilize the natural resources of the Rural Area, and are located on Prime Agricultural lands, the proposal does not conform to the policies of the Hamilton-Wentworth Official Plan.
SUBJECT: Application for a Zoning By-law Amendment for Lands Located at 955 Regional Road 97 (Flamborough) (PED09132) (Ward 14) - Page 9 of 11

Rural Hamilton Official Plan

The proposed uses have been reviewed with regard for the policies within the “Rural Hamilton Official Plan”, which has received Provincial Approval, but is currently under appeal to the Ontario Municipal Board. The following comments are, therefore, provided for information purposes only.

The subject property is designated as “Rural” on Rural Hamilton Official Plan Schedule “D” - Rural Land Use Designations. Section D.4.1 identifies uses permitted within the “Rural” designation. This designation permits agriculture, agriculture-related, and secondary uses of which the proposed use does not conform.

In addition, resource based commercial and industrial uses are also permitted; however, these resource based uses must in their very nature require certain natural attributes or resources for their location, including the availability of large lots or land areas as defined by this Plan. Policy D.4.1.1 (a) states that:

“The use must be directly related to and require a location on or in a close proximity to a rural resource…”

It is the opinion of staff that the proposed uses would not conform with the intent of the Rural Hamilton Official Plan.

Town of Flamborough Official Plan

The subject lands are designated as “Rural” and “Agriculture” on Schedule “B” - Rural Land Use of the former Town of Flamborough Official Plan. Policy B.2.1 limits the types of uses on “Agricultural” parcels to “Agricultural operations and similar uses”.

As it relates to the “Rural” designation, the proposed uses do not fall within the uses permitted by Policy B.3.1, which permits agriculture and related farm buildings; farm implement and machinery dealerships; fertilizer and agricultural chemical sales; grain milling facilities; feed mills; grain and seed storage; fruit and vegetable storage; milk collection; stockyards and sales barns; forestry; fish and wildlife management; reforestation projects; kennels, institutional uses which cater to the needs of the agricultural community; and non-farm related residential dwellings on lots created by severance, in accordance with the severance policies of this plan.

Therefore, the proposed uses do not conform with the policies of the Town of Flamborough Official Plan.
RELEVANT CONSULTATION:

Agencies/Departments Having No Comment or Objections

- Traffic Engineering and Operations Section, Public Works Department.
- Hamilton Municipal Parking System.
- Tax Administration/Banking Section, Corporate Services Department.
- Budgets Section, Corporate Services Department.
- Environmental Planning Section, Public Works Department.
- Hydro One Networks Inc.
- Hamilton Street Railway Company.
- Bell Canada.
- Union Gas.
- Cogeco Cable.

Forestry and Horticulture Section, Public Works Department

An assessment of the request to rezone the property to permit the existing Wholesale Topsoll Business shows that there are no Urban Forestry concerns as a result of this application.

Any proposed work, such as a driveway within or adjacent to the driplines of Municipal trees, must be reported in advance to Forestry and Horticulture so an assessment of potential tree impact can be made.

Halton Conservation Authority

Halton Conservation Authority staff has reviewed this proposal and states the following:

An Ontario Regulation 126/06 Permit will be required for any development (i.e. Grading, filling, or structures) proposed within the Conservation Halton’s regulated limit, including the spill zone identified on the survey/plan (prepared by A.T. McLaren Ltd., dated December 23, 2008).

The applicant will be required to meet Conservation Halton’s requirements for conveyance of spill flows, dry flood-proofing, and may be required to submit a site-specific hydraulic analysis, to the satisfaction of Conservation Halton.

Public Consultation

In accordance with Council’s Public Participation Policy, a preliminary notice of these applications was sent to 19 property owners within 120 metres of the subject lands, and one Public Notice sign was posted on site.
SUBJECT: Application for a Zoning By-law Amendment for Lands Located at 955 Regional Road 97 (Flamborough) (PED09132) (Ward 14)

One response was received from the preliminary notice of circulation letter (Appendix “C”). The concerns raised ranged from the history of the operation and how it came about to be an illegal use; and how the City will address the proposed use and associated impacts, in particular, Truck Traffic and the enjoyment of adjacent lands.

The Public comments have been addressed in Section 5 of the Analysis/Rationale section of the report. With respect to Traffic concerns, the Traffic Engineering and Operations Section has no comments or concerns with the proposed use as Regional Road 97 is a designated truck route. Notice of the Public Meeting will be given in accordance with the regulations of the Planning Act.

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
The public are involved in the definition and development of local solutions.

Environmental Well-Being is enhanced. ☒ Yes ☐ No
The use is not appropriate for the Rural Area, and denial of the subject application will cease the operation and protect the Beverly Swamp Environmentally Sensitive Area #17 from inappropriate development. A Halton Conservation Authority Permit would be required to facilitate this proposal.

Economic Well-Being is enhanced. ☐ Yes ☒ No
Denial of the subject application will allow for reuse of the subject lands for agricultural purposes, and reinforce the economic well-being of the Rural Area.

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)
Re: By-law Amendment ZAC-07-070

Dundas ON

November 19, 2007

To: City of Hamilton, Planning and Economic Development Department

Attention: Shannon Hamilton, Planner

Dear Shannon,

Thank-you for taking the time to discuss file: ZAC -07-070 with me today. I greatly appreciate your willingness to provide answers to my questions regarding this by-law amendment request and the coming issue of the trucking business.

The following is a list of questions pertaining to potential zoning changes for 955 RR 97. Most of them were brought up in our discussion today.

Questions regarding the “existing” Top Soil Business

1. When did the property become an existing top soil business?
2. What is the name of the top soil business?
3. What is the Ontario Business number or Corporation number for the top soil business?
4. Does the business have a Hamilton permit and if so when was it obtained.
5. When was the top soil business registered?
6. What activities, operations, equipment, etc. are allowed under zoning “Agricultural A-84”?
7. What materials, chemicals, etc. are allowed to be stored on land designated “Agricultural A-84”?
8. What is in the by-laws or elsewhere to prevent the top soil business from becoming a façade for the trucking business?
9. How much land is presently being used for the existing top soil business?
10. Why does the proposed request for rezoning apply to five hectares of land, when most of land indicated in the application is now used for other purposes (agriculture and residential,) and not for the existing business?
11. Is it good planning practice to have such an operation abutting or surrounding four residences?
12. Is the land marked “CM” on the Location Map indicate conservation land? If so, why is it included in the rezoning application and what buffer is required?
13. Where is the existing access to this business from RR 97 and will this business require yet another truck entrance onto RR97?
14. What measures are the owners and the city and obligated to take to ensure that the top soil business has no impact on the enjoyment, environment and value of nearby properties?
15. Are there lands in Hamilton/Flamborough that are zoned for this or similar activity and located where the impact on neighbors would be minimum? Why is the business not located on such lands?

Questions Regarding the Trucking Business.

1. What is the name of the trucking business?
2. Does the business have a Hamilton business permit and if so when was it obtained.
3. What is the Ontario Business number or Corporation number for the trucking business?
4. When was the trucking business registered?
5. How long has the trucking business existed?
6. Where was the trucking business previously located and what was the zoning there?
7. When was it moved to 955 Regional Road 97?
8. Was the City of Hamilton informed when the trucking business was moved to 955 Regional Road 97?
   - If not, why did the owners not inform the City of Hamilton at that time and why are the owners now raising this issue?
   - If so, why has the city allowed an industrial operation to exist on agricultural land adjacent to a primarily residential area?
9. What are the property taxes for 955 Regional Road 97?
10. What would the property taxes be for industrial land in Hamilton of sufficient size for the trucking operation?
11. How must municipal taxes have been avoided by locating the trucking business on agricultural lands instead of the required industrial zoned land? If municipal taxes have been avoided, what action will the City of Hamilton take to “level the playing field” for the other Hamilton tax-payers and businesses?
12. Are there lands in Hamilton/Flamborough (or in neighboring jurisdictions) that are zoned industrial where this business could be located with little or no impact on residential areas? Why is the business not located on such lands?

Other Questions Regarding the History and Business Activity at 955 Regional Road 97

1. How long has this property been owned by the family of the present owner?
2. What is the history of severances, conveyances, zoning, etc.
3. What adjacent properties are owned by the present owner and family?
4. What business was Banister Co. conducting on this property in 2006 and 2007? Was it in accordance to the agricultural zoning?

Although my questions may reflect my perception of what is occurring at 955 RR 97, this letter is not intended to be a written submission of my views on this issue. That will be made when we have all the answers and a complete understanding of the situation.
Re: By-law Amendment ZAC-07-070

November 19, 2007

It is also my understanding that the public meeting will not be held until some time in January 2008, and there is no urgency for me to make a written submission.

Please let me know when you have answers to the above questions.

Thanks for your help.

Yours Sincerely,

Hugh H. Sprague
SECTION 15 - IND Zone – Industrial Zone

(1) SCOPE

The provisions of this Section shall apply in all Industrial (IND) Zones except as otherwise provided in the Special Provisions Subsection hereto.

(2) USES PERMITTED

No person shall, within any IND Zone, use any lot or erect, alter or use any building or structure for any purpose except one or more of the following IND uses, namely:

(a) a body shop;
(b) a building or construction contractor's yard;
(c) a business office;
(d) a concrete plant;
(e) a factory outlet;
(f) a feed mill;
(g) a grain storing, weighing and drying operation;
(h) a fuel depot;
(i) a home occupation accessory to a permitted existing single dwelling;
(j) an industrial use;
(k) a public use, including a Municipal Airport and related activities;
(l) a retail lumber and building supply yard;
(m) a restaurant;
(n) a sawmill;
(o) a service trade;
(p) a transport terminal;
(q) a warehouse.

(3) ZONE REQUIREMENTS

No person shall, within any IND Zone, use any lot or erect, alter or use any building or structure except in accordance with the following provisions:

(a) LOT AREA (MINIMUM) - 1 400 m²
(b) LOT FRONTAGE (MINIMUM) - 30 m
(c) FRONT YARD DEPTH (MINIMUM) - 15 m
(d) INTERIOR SIDE YARD DEPTH (MINIMUM) - 5 m
(e) EXTERIOR SIDE YARD DEPTH (MINIMUM) - 15 m
(f) REAR YARD DEPTH (MINIMUM) - 7 m
(g) LOT COVERAGE (MAXIMUM) - 45%
(h) LANDSCAPED OPEN SPACE (MINIMUM) - 25%
(i) ADJACENT TO A RESIDENTIAL ZONE

A privacy fence or a planting area 1.5 metres wide shall be provided and maintained adjacent to every portion of any lot line that abuts any Residential Zone not separated by a public road.

(j) DRY INDUSTRIAL USE

Notwithstanding the list of uses permitted in Section 13(2) hereof, if a municipal water supply is not available, no industrial use shall be permitted unless it is a dry industry. For the purposes of this By-Law, a dry industry is one where the manufacturing process does not include or require the direct consumption of water and where the only waste water discharges are from auxiliary facilities such as washrooms, the indirect cooling of machinery and/or the pressure testing equipment.

(4) SPECIAL PROVISIONS

(a) IND-1 (TRANSPORT TERMINAL)

Notwithstanding any provisions of this By-Law to the contrary, within any area designated IND-1 on Schedule ‘A’ hereto, the following special provisions shall apply:

(i) Uses Permitted Restricted To
- a transport terminal.

(b) IND-2 (BUS STORAGE)

Notwithstanding any provisions of this By-Law to the contrary, within any area designated IND-2 on Schedule ‘A’ hereto, the following special provisions shall apply:

(i) Uses Permitted
- bus storage;
- swimming pool sales and service;
- any use permitted in an IND Zone.

(c) IND-3 (VEHICLE STORAGE FACILITY)

Notwithstanding any provisions in this By-law to the contrary, the land zoned IND-3 on Schedule ‘A’ may be used for a “vehicle storage, sales/auction facility”, subject to the applicable provisions of this By-law and the following special provisions: