Council Direction:

At its meeting of February 28, 2012, Planning Committee passed the following motion:

“That staff be directed to obtain an outside Planning opinion on the interpretation of the Provincial Policy Statement and Green Belt Plan respecting farm consolidation and residence surplus to a farming operation severance(s).”

Information:

At its meeting of January 31, 2012, Planning Committee considered Report PED12008 (see Appendix “A”) respecting the “Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Severance Application GL/B-11:96, Dave L. Mitchell (Owner), 1308 Guyatt Road (Former Township of Glanbrook).” Committee deferred the Report until April and the farm consolidation has closed.

The proposal is to sever a ‘farm help house’ from the farm which was subject to a purchase and sale agreement. Staff’s opinion was that the proposed severance did not comply with the Provincial Policy Statement or Green Belt Plan, in that a ‘farm consolidation’ had not occurred. Furthermore, it was staff’s opinion that a ‘farm help house’ is an accessory use to the farm and is not considered a ‘farm residence’ for purposes of lot creation, as prescribed by Provincial Policy Documents.
Subsequent to the meeting, it was brought to the attention of Senior staff that, notwithstanding this interpretation, in 2011, other applications (e.g. FL/B-11:30 and AN/B-11:83 - see Appendix “B”) to sever the ‘surplus farm dwelling’ prior to the actual ‘farm consolidation’ occurring were approved by the Committee of Adjustment and not appealed to the Ontario Municipal Board. Staff acknowledges the inconsistency in interpretation, but is resolute that its current opinion on such severances is correct and, notwithstanding the prior error(s) of interpretation, it is being strictly applied to all new and outstanding applications in a go-forward manner.

Given the divergent opinions and practices on the interpretation of Provincial Policy relative to farm severances, and the implications for future lot creation in Agricultural areas, staff was directed by Committee to obtain an outside Planning Opinion to assist Committee in its deliberations on this matter. In this regard, Mr. Mark Dorfman, who is regarded as an expert in Rural Planning and assisted the City in its defense of the New Rural Official Plan, was retained. His review and analysis of this matter, which confirms the current opinion of Planning staff, is attached as Appendix “C”.

APPENDICES

- Appendix “A”: Report PED12008
- Appendix “B”: Committee of Adjustment Decisions FL/B-11:30 and AN/B-11:83
- Appendix “C”: Farm Consolidation and Surplus Farm Dwelling Review and Analysis

:PM
Attaches. (3)
TO: Chair and Members
Planning Committee

WARD(S) AFFECTED: WARD 11

COMMITTEE DATE: January 31, 2012

SUBJECT/REPORT NO:
Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Severance Application GL/B-11:96, Dave L. Mitchell (Owner), 1308 Guyatt Road (Former Township of Glanbrook) (PED12008) (Ward 11)

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

PREPARED BY:
Peter De Iulio
(905) 546-2424, Ext. 1345

SIGNATURE:

RECOMMENDATION

That Council agrees to the following actions, as detailed in Report PED12008, respecting the appeal of the City of Hamilton Committee of Adjustment Consent/Land Severance Application GL/B-11:96 by Dave L. Mitchell, 1308 Guyatt Road, former Township of Glanbrook, as shown on Appendix “A” to Report PED12008, 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 proceed with the appeal to the Ontario Municipal Board (OMB) against the decision of the Committee of Adjustment to approve Application GL/B-11:96.

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

Application GL/B-11:96 was considered by the City of Hamilton Committee of Adjustment on November 24, 2011. Comments to the Committee of Adjustment 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 Greenbelt Plan, the Provincial Policy Statement, the Hamilton-Wentworth Official Plan, and the Former Township of Glanbrook Official Plan. The Committee of Adjustment approved the application, subject to conditions on November 24, 2011, (see Appendix “C”). Due to the appeal period, Planning and Economic Development Department staff submitted an appeal letter and the required fee to the Secretary-Treasurer of the Committee of Adjustment to initiate the appeal process, subject to Council’s approval/ratification.

Alternatives for Consideration - See Page 14.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

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.

HISTORICAL BACKGROUND (Chronology of events)

Chronology:


December 18, 2007: Appeal filed by City of Hamilton.

January 15, 2008: Appeals forwarded to Ontario Municipal Board.

February 5, 2008: PED08031 presented to Economic Development and Planning Committee requesting confirmation to proceed with appeal.

February 13, 2008: Council confirms minutes of Economic Development and Planning Committee (Minutes 08-003) to proceed with appeal.

February 25, 2008: Ontario Municipal Board issues Order allowing appeal and provisional consent is not given since applicant did not wish to proceed with the matter.


November 24, 2011: Consent Application GL/B-11-96 approved by Committee of Adjustment.

December 21, 2011: Last date for appeals to be filed.

Proposal

The subject property is located at 1308 Guyatt Road (former Township of Glanbrook). The application proposes to convey a parcel of land (Part 1), having a frontage of 64.15m± (210'±) and an area of 5,104m²± (1.26 acres ±), containing an existing single family dwelling (farm help house) for residential purposes, and to retain a parcel of land (Parts 2 and 3), having a frontage of 445.65m± (1,462'±) and an area of 590,727.47m²± (145.9 acres±), containing an existing single family dwelling and accessory farm buildings for Agricultural 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 Township of Glanbrook 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.

The Committee of Adjustment approved the application on November 24, 2011, subject to conditions (see Appendix “C”).
Details of Submitted Application:

Location:  
1308 Guyatt Road (Glanbrook)

Owner/Applicant:  
David L. Mitchell

Property Description:

Frontage:  
Approximately 529.8 metres

Depth:  
Approximately 1,127 metres

Area:  
Approximately 59.55 hectares

EXISTING LAND USE AND ZONING:

<table>
<thead>
<tr>
<th>Subject Lands:</th>
<th>Existing Land Uses</th>
<th>Existing Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture with a Single Detached Dwelling, a Farm Help House, and Barns</td>
<td>General Agricultural “A1” Zone</td>
<td></td>
</tr>
</tbody>
</table>

Surrounding Lands:

North  
Agriculture and Twenty Mile Creek  
General Agricultural “A1” Zone and Open Space “OS3” Zone

South  
Agriculture and Single Detached Dwellings  
General Agricultural “A1” Zone

East  
Agriculture and Single Detached Dwellings  
General Agricultural “A1” Zone

West  
Agriculture and Single Detached Dwellings  
General Agricultural “A1” Zone

POLICY IMPLICATIONS

Provincial Greenbelt Plan

The subject application has been reviewed with respect to the Greenbelt Plan. Staff notes that the lands to be severed are designated as “Protected Countryside - Prime Agricultural Area” under the Greenbelt Plan. Policy 3.1.3.1 states that “within prime agricultural areas, as identified in municipal Official Plans, normal farm practices and a full range of existing and new agricultural, agricultural-related, and secondary uses are supported and permitted.” Further, 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."

Staff notes that the proposed severance would result in a new separate residential lot that could be non-compliant to the requirements of the MDS formula as the retained agricultural structures have housed and are, therefore, capable of housing livestock.

Typically, in order to satisfy Minimum Distance Separation requirements, a condition of approval is applied to require a Zoning By-law Amendment to prohibit livestock operations within any existing barns. It should be noted, that no condition was included in the Conditions of Approval (see Appendix “C”) for the applicant/owner to demonstrate conformity to the Agricultural Code of Practice, Minimum Distance Separation Formula.

Policy 4.6 addresses lot creation for lands falling within the Protected Countryside. Policy 4.6.3 c) states that within the specialty crop area and prime agricultural area, lot creation is permitted for:

“The severance of a residence surplus to a farming operation, as a result of a farm consolidation, which residence was an existing use as of the date this Plan came into force, provided that the planning authority ensures that a residential dwelling is not permitted in perpetuity on the retained lot of farmland created by this severance. Approaches to ensuring no new residential dwellings on the retained lot of farmland may be recommended by the Province, or municipal approaches that achieve the same objective should be considered.”

The subject application proposes the severance of a farm help house, as indicated in Question 10.2 of the application form. The establishment of this farm help house was approved in 1997, through Site Plan Application D-2-108, and its use defined through a Development, Maintenance and Use Agreement, which was registered on title as Instrument Number LT452378.

Staff notes that the Greenbelt Plan defines a residence surplus to a farm operation as "an existing farm residence that is rendered surplus as a result of farm consolidation (the acquisition of additional farm parcels to be operated as one farm operation)". Further, the Plan defines existing uses as "uses legally established prior to the date that the Greenbelt Plan came into force".

In light of the foregoing, staff finds that while the farm help house was legally established, it was not established as a farm residence and, as such, cannot be deemed to be a residence surplus to a farm operation as a result of a farm consolidation. Further, and based on the application submitted, the subject application is not a result of a farm consolidation. As such, staff finds that the subject application does not conform to the Greenbelt Plan.
Provincial Policy Statement (PPS)

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Policy 2.3.3.3 states that "new land uses, including the creation of lots, and new or expanding livestock facilities shall comply with the minimum distance separation formulae." As mentioned within the Provincial Greenbelt Plan section above, the applicant/owner has not demonstrated that the proposed residential lot would be in compliance with the required setbacks of the MDS.

Policy 2.3.4 addresses lot creation and lot adjustments within agricultural areas. Specifically, Policy 2.3.4.1 c) states that lot creation in prime agricultural areas is discouraged, and may be permitted for:

"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. The approach used to ensure that no new residential dwellings are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches, which achieve the same objective."

Further, Policy 2.3.4.3 states that the creation of new residential lots in prime agricultural areas shall not be permitted, except in accordance with Policy 2.3.4.1 (c).

As indicated above, the subject application proposes the severance of a farm help house, as indicated in Question 10.2 of the application form. The establishment of this farm help house was approved in 1997, through Site Plan Application D-2-108, and its use defined through a Development, Maintenance and Use Agreement, which was registered on title as Instrument Number LT452378.

Staff notes that the PPS defines a residence surplus to a farm operation as "an existing farm residence that is rendered surplus, as a result of farm consolidation (the acquisition of additional farm parcels to be operated as one farm operation)."

In light of the foregoing, staff finds the farm help house not to be a farm residence and, as such, cannot be deemed to be a residence surplus to a farm operation as a result of a farm consolidation. Further, and based on the application submitted, the subject application is not a result of a farm consolidation. As such, staff finds that the subject application is not consistent with the PPS.

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
In addition, Policy 2.6.1 states that significant built heritage resources and significant cultural heritage landscapes shall be conserved. Staff notes that the subject property contains buildings identified as being of architectural and/or historical interest, and are listed within Hamilton’s Heritage Volume II. Further, staff notes Policy 2.6.2 of the PPS with respect to archaeology.

**Hamilton-Wentworth Official Plan**

The subject lands are designated as “Rural Area - Prime Agricultural Area” in the Hamilton-Wentworth Official Plan. Policy C-3.2.2 states that agriculture will continue to be the predominant use in the rural areas of the Region. Policy D-8 of the Plan addresses land severances, and states that the severance of land on prime agricultural lands is generally inconsistent with the principles of sustainable development. In addition, Policy D-8.1.1 states that policies related to Rural Settlement Areas, mineral aggregate areas, separation distances from watercourses, the Agricultural Code of Practice, consolidation of agricultural lands, surplus farm houses, continued farm viability, and lots limited to appropriate size of intended use must be incorporated into the Area Municipal Official Plans.

However, Policy B-9.2 states: “consider protection and preservation of regionally significant historical and cultural resources, including recognized archaeological sites, in the review of proposals for development and redevelopment.” Where possible, these attributes will be incorporated into the overall design in a manner which minimizes adverse impacts and encourages maintenance and protection. As noted above, the subject property contains buildings identified as being of architectural and/or historical interest, and are listed within Hamilton’s Heritage Volume II.

As discussed in the sections above and below, the proposed severance is not a result of a farm consolidation, but rather for the separation of a farm help house, which is contradictory to the policies of the Hamilton-Wentworth Official Plan.

**Former Township of Glanbrook Official Plan**

The subject lands are designated Agricultural on Schedule “A” - Land Use Plan in the Glanbrook Official Plan. The proposed application is to sever a parcel of land containing a surplus farm dwelling, which was established as a “permanent farm help house” under Site Plan Application D2-108.
The following policies are applicable:

"D.2  RURAL AREA POLICIES

D.2.1  General Policies

Consent for severance within the Rural Area, as identified on Schedule "A" - Land Use Plan, will be given consideration only if the applicant demonstrates that his or her application for consent is warranted and in conformity with the following policies:

D.2.1.1  Consents for non-farm uses and supporting or ancillary agricultural uses in the Rural Area must comply with the relevant policies in Section B.1 of this Plan.

D.2.1.2  Consent for a severance must comply with the minimum distance requirements of the Agricultural Code of Practice, and be sufficiently separated from nearby incompatible land uses to minimize adverse environmental effects.

D.2.2  Agricultural Policies

D.2.2.1  Any parcel severed in the Agricultural area shall:

(a)  Be located on the least productive portion of the applicant's land holding, where possible;

(b)  Have appropriate frontage on a maintained public road; and,

(c)  Not interfere with the efficient agricultural operation of the remaining lands and adjacent lands.

D.2.2.2  On prime agricultural lands in relation to a viable farm operation, the size of the parcel severed shall be limited to the requirements of the intended use and generally shall not be larger than the lot size requirements of Section D.1.4 of this Plan.

D.2.2.3  No severance shall prejudice the viability of a farm unit.

D.2.2.4  Consent to provide a lot for farm help shall be prohibited. A farm residence(s) for farm help may be permitted in accordance with the policies of Section B.1.1.8 of this Plan, and through appropriate Zoning regulations without the necessity for a severance.
D.2.2.5 No severance shall be permitted which creates an infilling situation under the provisions of this Plan.

D.2.2.6 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.

D.2.2.7 Consents for residential purposes, in accordance with other policies of the Plan, may be considered from viable farming operations provided that:

(a) The applicant has owned, resided on, and actively farmed the property for the last 10 years; and,

(b) The remaining property, or for the retiring farmer, the conveyed property, is a viable farming operation and not less than 18 hectares (approximately 45 acres) in size, unless the farm operation is of a specified nature and is considered viable under Section H.5.21 of this Plan.

D.2.2.8 Consents considered under Section D.2.2.7 shall be limited to one of the following:

(a) One retirement lot for a bona fide farmer who is retiring from an active farming life so long as the farmer retains a residential lot with the existing farm dwelling, and continues to live therein and conveys the remaining lands; or the farmer retains a residential lot to build a retirement dwelling for himself, and conveys the farm, including the existing farm dwelling.

(b) One lot to a child of a bona fide farmer, so long as the child's assistance is essential to the farming operation as his or her principal activity, and no severance has been granted from the land within the last 10 years.

However, the applicant is encouraged to construct a second residence on the farm in accordance with the provisions of Section B.1.1.8 of this Plan rather than severing a lot, in order to retain the land and the residence as an asset of the existing farm operation.

D.2.2.9 In addition to Section D.2.2.8, and subject to Section D.2.2.7, a severance may be considered for a surplus farm house created as a result of a farm consolidation under Section D.2.2.6 of this Plan provided that:
(a) No severances have been granted from the lands consolidated to the farm within the last 3 years; and,

(b) The location of the proposed severance does not interfere with the farm operation.

D.2.2.10 Lands in areas having soil Classes 5, 6, 7, and 0, as defined in the Canada Land Inventory, which are not part of a viable farming operation, shall only be considered for a residential consent if the application;

(a) Has a property of at least 18 hectares (approximately 45 acres);

(b) Has owned the property for at least 10 years;

(c) Has had no consents granted from the land within the last 10 years; and,

(d) Conforms with the other policies of this Plan.

D.2.2.11 In addition to Section D.2.2.8 to D.2.2.10, inclusive, a consent to sever a property for one residential dwelling, on an infilling basis, may be considered provided:

(a) The land fronts on a public roadway;

(b) The land is situated between two residential dwellings, fronting on the same side of the road, which are not more than 60 metres (approximately 200 feet) apart, provided that such existing dwellings are not located on or form part of an existing farming operation;

(c) The land is situated within a linear development of three or more existing non-farm residential dwellings grouped on the same side of a public roadway; and,

(d) The application conforms with the other policies of this Plan.

D.2.2.12 In addition, to Sections D.2.2.8 to D.2.2.10 inclusive, a consent for a residential lot may be considered if the total existing property is not greater than 0.8 hectares (approximately 2 acres) in size and contains more than one residential dwelling.”
As noted above, the applicant/owner has not demonstrated that the proposed residential lot would comply with the requirements of the MDS formula and, therefore, may not conform to Policy D.2.1.2. The application to sever a surplus dwelling (farm help house) from an active farming operation, that also has a principal dwelling on the property, does not conform to the Glenbrook Official Plan.

Rural Hamilton Official Plan

The City of Hamilton Rural Official Plan was adopted by Council on September 27, 2006, and approved, with modifications, by the Province on January 7, 2009. The Plan has been appealed to the OMB. An interim Order of the Board was issued June 28, 2011, bringing the majority of the plan into full force and effect, with the exception of the land division policies and some site-specific appeals that have yet to be resolved. As a result, the land division policies are not in force and effect, but do represent Council's direction for lot creation in the rural area. Accordingly, staff has reviewed the proposal with regard to these policies for information purposes only.

The subject lands are designated as “Agriculture” under the Ministerial approved Rural Hamilton Official Plan.

Policy F.1.14.2.1 states that consents for new lot creation in the Agriculture and Specialty Crop designations, except surplus farm dwelling severances, shall be permitted provided the following conditions are met:

"a) The permitted agricultural use or agricultural-related use shall comply with the policies of Sections D.2, Agriculture; and D.3, Specialty Crop of this Plan;

b) The minimum lot size for newly created lots and retained lots within the:

i) Agriculture designation shall be 40.4 hectares (100 acres), except as provided in Section D.2.2.2 D.2.1 [Mod 28(g)].

ii) Specialty Crop designation shall be 16.2 hectares (40 acres), except as provided in Section D.2.2.2 D.2.1 [Mod 28(g)].

c) The minimum lot size requirements of the Agriculture designation and Specialty Crop designation may also include lands designated as “Open Space” on Schedule D - Rural Land Use Designations, or identified within the Natural Heritage System on Schedule B - Natural Heritage System.
d) New lots and lot additions shall be considered for agricultural uses only, and shall demonstrate by a report prepared by an accredited professional knowledgeable in farm economics, such as an agrologist or agronomist, that the proposed agricultural uses on the severed and retained lots are each of sufficient size and nature to be reasonably expected to:

i) Sustain a commercially viable farm operation;

ii) Allow farm operators the flexibility to change the existing and proposed farm operation in the event of business failure; and,

iii) Allow farm operators the flexibility to diversify and intensify the production of agricultural commodities in response to changing economic conditions and trends in agriculture.

The City may request comments on this report from the Ministry of Agriculture, Food and Rural Affairs, or other independent peer reviewer, prior to consideration of the new lot or lot addition for severance approval.

For information purposes, staff notes that the subject application is not for any of the aforementioned permitted severance forms. In addition, F.1.14.2.2 states that an existing farm dwelling that is a residence surplus to a farm operation as a result of a farm consolidation may be severed, subject to specific requirements. One of the specific requirements is:

"F.1.14.2.2c)vii) Barns and farm buildings situated on the land retained as a result of surplus farm severances shall comply with the Minimum Distance Separation 1 formula of the Province."

As noted above, the applicant/owner has not demonstrated that the proposed residential lot would comply with the requirements of the MDS formula and, therefore, may not conform to this Policy.

Furthermore, the subject application is not a surplus farm dwelling severance. As such, staff finds that the subject application would not conform to the Lot Creation policies of the Ministerial approved Rural Hamilton Official Plan.

The subject property meets three of the ten criteria used by the City of Hamilton and Ministry of Tourism and Culture for determining archaeological potential:

1) Within 300 metres of a primary watercourse or permanent waterbody, 200 metres of a secondary watercourse or seasonal waterbody, or 300 metres of a prehistoric watercourse or permanent waterbody;
2) Local knowledge associates areas with historic events/activities/occupations; and,

3) Along historic transportation routes.

These criteria define the property as having archaeological potential. Accordingly, Section 2 (d) of the Planning Act, and Section 2.6.2 of the Provincial Policy Statement apply to the subject application, which would normally require an Archaeological Assessment. This application will not result in significant soil disturbance. If this severance is granted, the City does not require an Archaeological Assessment, but retains the authority to require one for any future applications on the subject property under the Planning Act, and staff requires that inclusion of Note #1 below.

The original farmhouse and barn are listed in the City's Inventory of Buildings of Architectural and/or Historical Interest. Staff encourages the applicant to retain the historical farmhouse and barn.

**Former Township of Glanbrook Zoning By-law No. 464**

The subject lands are zoned General Agricultural “A1” Zone in the Former Township of Glanbrook Zoning By-law No. 464. The lands to be conveyed and retained meet the minimum lot frontage and area requirements of the Zone.

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### RELEVANT CONSULTATION

- N/A.

### ANALYSIS / RATIONALE FOR RECOMMENDATION

.include Performance Measurement/Benchmarking Data, if applicable.

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**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 Guyatt Road 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.

The farm help house to be severed was approved in May 1997, as an accessory structure to the principal, retained dwelling under Site Plan D2-108 since the policies of the applicable Glanbrook Official Plan prohibited consent to provide a lot for farm help. In addition, since the proposed lot to be severed is closer to livestock facilities than existing non-farm dwellings, the proposed lot may not comply with the Minimum Distance Separation (MDS) requirements. Therefore, the proposal is not consistent with the policies of the Provincial Policy Statement and does not conform to the policies of the Provincial Greenbelt Plan, Hamilton-Wentworth Official Plan, Glanbrook Official Plan, and the Council adopted Rural Hamilton Official Plan.

The applicant and agent have advised staff that it is their intent to amend the application at the OMB to permit the severance of a surplus farm residence (farm help house) on the basis of a farm consolidation. To date, staff has not completed a review of the applicable Provincial and Municipal policy documents to make an informed opinion on the merits of any such revised application. However, technically, the farm has not yet been consolidated, as it is subject to a conditional offer of purchase and sale. Accordingly, it is recommended that the appeal of the application proceed. Staff will advise Committee of any further developments in this regard.

**ALTERNATIVES FOR CONSIDERATION**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

**Option 1**

Council could proceed with the appeal and direct appropriate Legal Services and Planning staff to attend the OMB 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 OMB. However, it should be noted that a third party appeal has also been submitted and received by the Committee of Adjustment.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Healthy Community

- Plan and manage the built environment.

APPENDICES / SCHEDULES

- Appendix “A”: Location Map
- Appendix “B”: GL/B-11:96 Severance Sketch
- Appendix “C”: GL/B-11:96 Severance Decision

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Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Severance Application GL/B-11:96, Dave L. Mitchell (Owner), 1308 Guyatt Road (Former Township of Glanbrook) (PED12008) (Ward 11) - Page 16 of 19

Committee of Adjustment

Subject Property
1308 Guyatt Road

Lands to be Retained
Lands to be Severed

City of Hamilton

Appendix "A" to Report PED12069 (Page 16 of 19)
COMMITTEE OF ADJUSTMENT
NOTICE OF DECISION
APPLICATION FOR CONSENT LAND SEVERANCE
APPLICATION NO. GL/B-11:96
SUBMISSION NO. B-96/11

IN THE MATTER OF The Planning Act, R.S.O. 1990, Chapter P13, Section 52(1):

AND IN THE MATTER OF the Premises known as Municipal number 1308 Guyatt Road, formerly in the Township of (Enbrook) Glanbrook, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the Owner David L. Mitchell, 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 (Part 1 on attached sketch) having a frontage of 64.15m+ (210') and an area of 5104m² (1.26 acres,) containing an existing single family dwelling for residential purposes, and to retain a parcel of land (Parts 2 & 3 on attached sketch) having a frontage of 445.65m+ (1,462') and an area of 580,727.47m² (145.9 acres) containing a single family dwelling and accessory farm buildings for agricultural purposes.

Note: This application is a resubmission of Consent GL/B-07:126, which was granted by the Committee of Adjustment (see attached decision) and appealed to the Ontario Municipal Board. The Ontario Municipal Board upheld the appeal and Ordered that the provisional consent not to be given.

THE DECISION OF THE COMMITTEE IS:

That the said application, as set out in paragraph three above, IS APPROVED for the following reason:

1. The Committee, having regard to the evidence, is of the opinion that this proposal is for the severance of a residence surplus to the farming operation, whereby no new building lot is being created, and is therefore satisfied that the proposal does not offend the intent of the Hamilton-Wentworth and Township of Glanbrook Official Plans.

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

2. The owner shall satisfy ALL requirements financial and otherwise of the City of Hamilton, Planning and Economic Development Department, Development Planning (East) Division.

3. The owner shall submit survey evidence that the existing structures located on both the lands to be conveyed and the lands to be retained conform to the requirements of the Zoning By-Law or alternatively apply for and 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 Services Division).

4. The owner/applicant shall submit survey evidence from a BCIN Qualified Designer (Part 8 Sewage System) or Professional Engineer that the existing septic system complies with the clearance requirements of Part 8 of the Ontario Building Code for the lands to be severed and retained, to the satisfaction of the Planning and Economic Development Department (Building Services Division).

5. The owner shall submit to the Committee of Adjustment Office an administration fee of $15.30, payable to the City of Hamilton, to cover the cost of setting up a new tax account for the newly created lot.

6. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.
SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Severance Application GL/B-11:96, Dave L. Mitchell (Owner), 1308 Guyatt Road (Former Township of Glanbrook) (PED12008) (Ward 11) - Page 19 of 19

DATED AT HAMILTON this 24th day of November, 2011.

M. Dudzic, Chairman

L. Gaddye D. Serwatuk

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS December 1st, 2011. HEREIN NOTED CONDITIONS MUST BE MET WITHIN ONE (1) YEAR OF THE DATE OF THIS NOTICE OF DECISION (December 1st, 2012) OR THE APPLICATION SHALL BE DEEMED TO BE REFUSED (PLANNING ACT, SECTION 53(4)).

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS December 21st, 2011.

THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.

NOTE:

“That prior to any further approvals under the Planning Act or any construction requiring a building permit issued by the City of Hamilton, the property owner shall carry out an archaeological assessment of the entire development property and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances shall take place on the subject property prior to the approval of the Director of Planning and the Ministry of Tourism and Culture confirming that all archaeological resource concerns have met licensing and conservation requirements. All archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the Ministry of Tourism and Culture.

The subject lands are considered to be of archeological potential, and should deeply buried archaeological remains be found on the property during any of the above development activities the Ontario Ministry of Tourism and Culture (MTC) should be notified immediately (519.677.7742). In the event that human remains are encountered during construction, the applicant/landowner should immediately contact both MTC and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Government Services (416.326.8392).”
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 number 1214 Highway #8, formerly in the Town of Flamborough, now in the City of Hamilton; 

AND IN THE MATTER OF AN APPLICATION by the agent Barry Wray on behalf of the owners Stanley and Janina Krupski, 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 having a frontage on Highway #8 of 237.7m± (780'), and an area of 29.6ha.± (73.12ac.), containing a portion of an existing barn (to be demolished), and to retain a parcel of land having a frontage on Seaton Road of 95m± (312'), and an area of 1.65ha.± (4.1ac.) containing an existing single family dwelling, implement shed and a portion of a barn (barn to be demolished) for residential purposes. 

THE DECISION OF THE COMMITTEE IS: 

That the said application, as set out in paragraph three above, IS APPROVED for the following reasons: 

1. The proposal does not conflict with the intent of the Hamilton-Wentworth and Town of Flamborough Official Plans. 
2. The Committee is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the lands. 
3. The Committee considers the proposal to be in keeping with development in the area. 

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 shall submit a deposited Ontario Land Surveyor’s Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar. 
2. That the owner/applicant shall apply for and receive approval of a Zoning By-law Amendment application prohibiting the construction of any new residential dwellings on the conveyed lands, to the satisfaction of the Manager of Development Planning. 
3. That the barn be photo documented and provided to Heritage Planning prior to demolition. 
4. That the owner/applicant either demonstrate the buildings to remain on the lands to be retained comply with the Zoning By-law or receive approval of all required zoning by-law modifications to the satisfaction of the Manager of Development Planning. 
5. The owner must dedicate a 10.526 foot (3.208m) road allowance widening on Seaton Road from both the conveyed and retained lands, by transfer deed to the City, to the satisfaction of the Senior Director of Growth Management. 
6. The owner shall demolish the existing barn straddling the proposed lot line. Demolition of the existing barn is subject to a demolition permit issued in the normal manner. 
7. That the applicant be required to make an application for Ontario Building Code compliance and pay the relevant fees to the satisfaction of The Planning and Economic Development Department (Building Services Division).
8. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.

9. The owner submit to the Committee of Adjustment office an administration fee of $15.30 payable to the City of Hamilton to cover the costs of setting up a new tax account for the newly created lot.

DATED AT HAMILTON this 26th day of May, 2011.

M. Dudzic, Chairman

D. Smith

L. Gaddye

I. Dunlop

D. Drury

V. Abraham

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS June 2nd, 2011.

HEREIN NOTED CONDITIONS MUST BE MET WITHIN ONE (1) YEAR OF THE DATE OF THIS NOTICE OF DECISION (June 2nd, 2012) 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 June 22nd, 2011.

THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.

NOTES:

1. Staff advise that the following noise warning clause should be included in any future purchase and sale and/or lease/rental agreements for the retained lands:

"Purchasers/tenants are advised that sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels may exceed the Municipality’s and the Ministry of the Environment’s noise criteria."

2. Based on the attached plans, and on this application being approved and all conditions being met, the owner / applicant should be made aware that the lands to be conveyed will be assigned the municipal address of 1240 Seaton Road (based on the location of an existing culvert and entry), and that the lands to be retained will remain as 1214 Highway No. 8.
Subject Property
1214 Highway No. 8

Lands to be Retained
Lands to be Severed

City of Hamilton
APPLICATION FOR CONSENT LAND SEVERANCE

APPLICATION NO. AN/B-11:83
SUBMISSION NO. B-83/11

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 401 Lynden Road, formerly in the Town of Ancaster, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the agent David Stevens on behalf of the owners Paul and Patricia Errygers, for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the conveyance of an irregular U shaped parcel of land measuring approximately 239.0m and 136m on Lynden Road by 403.4m deep with an area of 17.24 hectares to be used for agricultural purposes, and to retain a parcel of land measuring approximately 104m on Lynden Road by 220m deep with an area of 2.3 hectares containing the existing single family dwelling for residential purposes.

THE DECISION OF THE COMMITTEE IS:

That the said application, as set out in paragraph three above, IS APPROVED for the following reasons:

1. The proposal does not conflict with the intent of the Hamilton-Wentworth and Town of Ancaster Official Plans.
2. The Committee is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the lands.
3. The Committee considers the proposal to be in keeping with development in the area.

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 shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar.
2. That the owner/applicant receive rezoning approval to the satisfaction of the Manager of Development Planning to prohibit any residential uses.
3. That the owner/applicant receive approval of an Official Plan Amendment to the satisfaction of the Manager of Development Planning.
4. That the Owner dedicate a 10 ft (3.048 m) of land from the lands to be severed and retained for road allowance widening purposes to establish a property line of 43 ft (13.106 m) from the centreline of Lynden Road.
5. The applicant shall ensure compliance with Ontario Building Code requirements regarding spatial separation to the satisfaction of the Planning and Economic Development Department (Building Services Division).
6. The owner shall demolish all or an appropriate portion of any buildings straddling the proposed property line, to the satisfaction of the Planning and Economic Development Department (Building Services Division). May be subject to a demolition permit issued in the normal manner.
7. The owner shall submit survey evidence that the existing structures located on the lands to be conveyed (and if there are any buildings are located on the lands to be conveyed) conform to the requirements of the Zoning By-Law or alternatively apply for and 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 Services Division).

8. The owner/applicant shall submit survey evidence from a BCIN Qualified Designer (Part 8 Sewage System) or Professional Engineer that the existing sewage system complies with the clearance requirements of Part 8 of the Ontario Building Code for the lands to be retained, to the satisfaction of the Planning and Economic Development Department (Building Services Division).

9. The applicant shall confirm how the "farm equipment building" is now accessory to the single family dwelling or receive final approval of a zoning By-Law amendment or minor variance for the lands to be retained. If the building is no longer intended to be constructed, the applicant shall cancel building permit 10-187648.

10. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.

DATED AT HAMILTON this 27th day of October, 2011.

M. Dudzo, Chairman

L. Gaddye

D. Smith

V. Abraham

D. Drury

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS November 3rd, 2011.
HEREIN NOTED CONDITIONS MUST BE MET WITHIN ONE (1) YEAR OF THE DATE OF THIS NOTICE OF DECISION (November 3rd, 2012) OR THE APPLICATION SHALL BE DEEMED TO BE REFUSED (PLANNING ACT, SECTION 53(4)).

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS November 23rd, 2011.

NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.

NOTES (TO BE INCLUDED IN DECISION IF APPROVED):

1. The subject property has been determined to be an area of archaeological potential. It is reasonable to expect that archaeological resources may be encountered during any demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances and the applicant is advised to conduct a Stage 1 and 2 archaeological assessment prior to such impacts in order to address these concerns and mitigate through preservation or resource removal and documentation. Mitigation, by an Ontario-licensed archaeologist, includes the monitoring of any mechanical excavation arising from this project. If archaeological resources are identified on-site, further Stage 3 Testing and Stage 4 Mitigation may be required as determined by the Ontario Ministry of Culture. All archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the Ministry of Culture.

2. Should deeply buried archaeological materials be found on the property during any of the above development activities the Ontario Ministry of Culture (MCL) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the proponent should immediately contact both MCL and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Small Business and Consumer Services (416.326.8392).
Committee of Adjustment

Subject Property
401 Lynden Road

Lands to be Retained
Lands to be Severed

File Name/Number: AN/B-11/83
Date: October 19, 2011
Technician: KA
Map Not to Scale
Appendix "A"

City of Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Appendix "C" to Report PED12069  
(Page 1 of 18)

FARM CONSOLIDATION AND SURPLUS FARM DWELLING  
REVIEW AND ANALYSIS


For: Planning Division, City of Hamilton Planning and Economic Development Department

1. Questions to be Considered

There are two questions that are addressed in this review and analysis.

(a) With regard to a proposed severance of a surplus farm dwelling, should the required farm consolidation take place prior to consideration of the consent application or as a condition of the consent to sever a surplus farm dwelling?

(b) According to existing provincial and City planning policies, is an accessory farm help dwelling considered eligible as a surplus farm dwelling as a result of a farm consolidation?

The first question is essentially an administrative issue that addresses the matter of ensuring that a farm consolidation does in fact take place when considering a consent for the severance of a surplus farm dwelling.

The second question raises the issue of whether an existing farm help dwelling should be viewed as a farm residence that is eligible to be severed on its own lot, if it is considered surplus to the farm consolidation.

March 26, 2012  1
2. **Answers to these Questions**

The review and analysis concludes that the two questions are answered, as follows.

**Question (a)**

A severance for a surplus farm dwelling on its own lot must be considered and consented to by the authority, subject to the policies of the official plan, when the owner has acquired the farm as part of a farm consolidation, and only afterwards does the owner determine that an existing farm dwelling located on the farm that is part of the consolidation is surplus to the needs of the farming operation.

**Question (b)**

A farm help dwelling that originally was constructed on a farm, is an accessory use on the farm, is not considered as a principal farm residence and therefore cannot be determined as a "residence surplus to a farming operation" as a result of a farm consolidation.

3. **Methodology of this Review and Analysis**

Both of these questions are addressed in the context of current provincial planning policies and plans. To understand the evolution of provincial policy regarding both questions, previous and current policies and plans are assessed to provide a helpful understanding of the context.

The municipal official plans and zoning bylaws are considered to understand the implementation of provincial and municipal policies.

These references are listed as an appendix to this review and analysis.

Both questions are related since they require farm consolidation, consent to sever and a surplus farm residence.
4. **Assessment of Provincial Policies and Plans**

(a) **Severing a Surplus Farm Residence**

In the event that a farm and its farming operation are consolidated into an existing farm operation, and there is a minimum of two farm residences on the consolidated farm, a farm owner who acquires the farm as part of the farm operation may not have a need for multiple farm residences. The planning policy mechanism to remove only one of the farm residences from the farm assets is to apply for a consent to sever the surplus farm residence on a separate smaller lot.

The practice of severing a surplus farm residence has forever existed in Ontario municipalities. During the past thirty-five years, the practice of creating severed lots in agricultural areas has become more restrictive because of the overriding provincial interest in protecting and conserving agricultural lands. The concern is that by allowing the severance of a surplus farm residence as planning policy, the municipality must ensure that this severance is intended to legitimately relieve the new farm owner from the burden of a surplus dwelling when a farm consolidation takes place. The policy must provide that a current owner of a farm parcel who intends to sell the farm to another farmer or farm organization is not entitled to a surplus farm residence severance in anticipation of a farm consolidation.

Many municipalities that decide to protect prime agricultural areas do not provide for the severance of surplus farm dwellings and therefore avoid the concern that this practice would otherwise create prohibited non-farm residential lots in the countryside.

Severances in agricultural areas are now essentially limited to surplus farm residences as explained in the following assessment.

*Food Land Guideline, 1978*

This severance practice was first included as a provincial policy in the Food Land Guideline. This Guideline is the product of a public discussion arising from the 1976 provincial government paper titled, "A Strategy for Ontario Farmland: a statement". Policy 4A.20.2 stated:
If farm consolidation has rendered a farm house surplus, and a severance is requested to dispose of the second house - in this instance, the size of the lot should be kept to a minimum. If the farm buildings formerly associated with this second house are close to the house, as determined by the MDS formula, the farmer should be encouraged to rent the house rather than create a potential future problem for himself by risking a nonfarm resident adjacent to his livestock barn.

This particular consent was one of five types of farm-related severances considered acceptable at that time in agricultural areas. The provincial interest was to protect agricultural lands from the effects of rural residential development. When a farm residence is created on its own smaller lot, the use becomes non-farm or rural residential in the agricultural area.

The Food Land Guideline required that a municipality may consider including the surplus farm residence policy in its official plan.

This provincial policy sets out the criteria that if there is a farm consolidation, a second farm dwelling is consequently rendered surplus by the owner and the severed lot must be kept to a minimum area. A condition is imposed that if there is a potential future nuisance conflict between this non-farm residence and a livestock operation on the farm, then the severance of the surplus farm residence should not be permitted.

There are no other criteria or definitions in the Food Land Guideline that provide further guidance to the municipality, particularly with respect to the types of farm consolidation.

*Comprehensive Set of Provincial Policy Statements, 1994*

The provincial Food Land Guideline and others evolved into provincial policy statements following a major review and revision of the *Planning Act* in 1993 (Bill 163). This provincial policy statement came into effect on March 28, 1995.
Policy D3, Lot Creation, narrowed severances in designated agricultural areas to “residences surplus to farming operations” and to “retiring full-time farmers.” Provincial policy discouraged municipalities from allowing severances in agricultural areas.

Two terms are defined in the policy statements:

Residences surplus to farming operations means an existing second farm residence built prior to 1978 and surplus to the farm, or an existing farm residence that is rendered surplus as a result of farm consolidation.

Farm consolidation means the acquisition of additional farm parcels to be operated as one farm operation.

Accompanying the provincial policy statements are Implementation Guidelines published in 1995. The province required that the municipality in its official plan set out the tests for creating surplus farm residence lots. The policy statement sets out the minimum requirements:

- if there is a second farm residence on the farm that was constructed prior to 1978, and it is surplus to the farm operation, then it may be severed on its own lot. (The 1978 threshold comes from the date when the Food Land Guideline was established). This is a new condition for a severance that does not require a farm consolidation.

- if there is a consolidation of farm parcels into one farm operation and there is one surplus farm residence, whenever it is built, then it may be severed on its own lot.

The Implementation Guidelines indicate that a municipality may also require that farm consolidation is also intended to merge abutting farm parcels in title. It is stated that some municipalities also require that the retained lot be zoned to prevent a new dwelling being built upon it.
From these documents, farm consolidation is perceived to primarily allow farmers to purchase farm parcels that are not adjacent to each other and to farm them as one operation. It is left to the municipality to determine that only abutting farms that merge may allow surplus farm residence severances.

The policy statement allows the municipality in its official plan to establish the implementation policies for this type of severance provided that they are consistent with the provincial policy. The overriding provincial interest is to discourage the creation of non-farm residences in agricultural areas.

_Provincial Policy Statement, 1996_

As a result of substantive amendments to the Planning Act (Bill 20), a new provincial policy statement came into effect on May 22, 1996.

Policy 2.1.2 stated that “lot creation in prime agricultural areas is generally discouraged”. “New residential uses” would be permitted for “a farm retirement lot” and “a residence surplus to a farming operation.” The latter use is defined as follows:

 Residence surplus to a farming operation means one of two or more existing farm residences built prior to 1978 and surplus to the farm or an existing farm residence that is rendered surplus as a result of farm consolidation (farm consolidation means the acquisition of additional farm parcels to be operated as one farm operation).

The same two conditions for a severance of a surplus farm severance remain.

There are subtle changes in this definition from the previous 1995 definitions.

- the definition recognizes that there may be two or more existing farm residences on a farm, but only the residence that is built prior to 1978 may be severed as surplus.
whereas previously, reference is made to “farm operations”, this definition refers to “a farming operation”. The emphasis is placed on one farm operation that includes one or more farm residences on several farms that are consolidated and only one farm residence is surplus.

the definition of farm consolidation is included in one definition, but its meaning is the same as previously stated. Again, it is implied that the determination of the surplus farm residence occurs after the farms are acquired and consolidated.

This policy statement requires the municipality to frame its own policy in its official plan, provided it has regard to provincial policies. There is no further guidance to the municipalities with respect to the types of farm consolidation preferred by the province. It is implied that farm consolidation means acquiring discrete farm parcels.

Oak Ridges Moraine Conservation Plan, 2001

This is first provincial government prescribed plan. Section 32(1) allows only one severed lot for a residence surplus to a farming operation. A “residence surplus to a farming operation” is defined as:

(a) if there are two or more farm residences, both built before 1978, on a lot that is being used in a farming operation, one of those residences that is surplus to the farming operation, or

(b) if the owner and operator of a farming operation acquires an additional lot and uses it in the consolidated farming operation, any existing farm residence that is surplus to the consolidated farming operation.
The approach in this provincial plan is that where there is no farm consolidation, and both farm residences must be built before 1978. In Provincial Policy Statement 1996, only one of these farm residences needs to be built prior to 1978. It is implied that where there is a farm consolidation, any surplus farm residence whenever built, or even all, may be severed.

There is no definition of “consolidating farm operation”, but it is clear that after consolidation, any existing farm residences that are deemed surplus may be severed after the acquisition.

It is evident that in both this definition and in the two previous provincial policy statements, when the farm residence was built is not a criterion for a severance after farm consolidation.

There is no prescription on the preferred types of farm consolidation, although it still appears that discrete farm parcel acquisition is meant as a farm consolidation.

Greenbelt Plan, 2004

This is the second relevant prescribed provincial plan that came into effect on December 16, 2004.

Section 4.6 sets out the prescriptive policies for Lot Creation in the Protected Countryside. In Specialty Crop, Prime Agricultural, and Rural Areas, the policy states:

The severance of a residence surplus to a farming operation as a result of a farm consolidation, which residence was an existing use as of the date this Plan came into force, provided that the planning authority ensures that a residential dwelling is not permitted in perpetuity on the retained lot of farmland created by the severance. Approaches to ensuring no new residential dwellings on the retained lot of farmland may be recommended by the Province, or municipal approaches that achieve the same objective should be considered.
The provincial policy statement has substantively changed to not permit a surplus farm dwelling to be severed from a farm where there is no farm consolidation.

The policy clearly states that the severance occurs after the farm consolidation and the surplus farm dwelling must exist as of the date when the Greenbelt Plan came into effect.

The definition of a "Residence surplus to a farm operation" states:

an existing farm residence that is rendered surplus as a result of farm consolidation (the acquisition of additional farm parcels to be operated as one farm operation).

The definition of a "Farm consolidation" states:

the acquisition of additional farm parcels to be operated as one farm operation.

The intent is clear to allow a severance only where a farm consolidation has taken place.

There is no guidance or prescription on the types of farm consolidation preferred by the province, but it appears that the intent of a farm consolidation is to acquire discrete farm parcels.

*Provincial Policy Statement, 2005*

The 1996 provincial policy statement was replaced by the new statement that came into effect on March 1, 2005.

Lot creation of non-farm lots in prime agricultural areas are discouraged and are permitted for a "residence surplus to a farming operation as a result of farm consolidation".

The definition of a "Residence surplus to a farming operation" is the same as in the Greenbelt Plan. There is no separate definition of farm consolidation, except as it is referred to in the surplus residence definition.
In this provincial policy, the severance is to occur after and as a result of, the farm consolidation.

The policy statement requires the municipality to frame its own policy in an official plan provided that it is consistent with provincial policies. The continuing provincial interest is to prescribe that additional new non-farm residences are not built on newly created lots in agricultural areas.

There is no provincial guidance on the types of farm consolidation, but it appears that the intent of farm consolidation is to acquire discrete farm parcels.

_Growth Plan for the Greater Golden Horseshoe, 2006_

This is the third provincial prescribed plan that came into effect on June 16, 2006.

There are no policies to deal with lot creation for surplus farm dwellings.

_Niagara Escarpment Plan Amendment, 2011_

The Niagara Escarpment Plan was amended on March 23, 2011 to revise the policies to sever a lot with a surplus farm dwelling in designated Escarpment Protection and Escarpment Rural Areas.

The policy reads, in part:

>The severance of a parcel with a residence that has been rendered surplus to an agricultural operation as a result of a farm consolidation is permitted.

A “residence surplus to a farm operation” is defined as:

>an existing residence that is rendered surplus to an agricultural operation as a result of a farm consolidation that normally follows the acquisition of an additional farm parcel or parcels which, following acquisition, will be operated as one farm operation.
This is the first time in provincial policies or plans where it is clearly stated that the farm consolidation must take place first, then the farm dwelling is determined to be surplus, then the severance and the creation of the lot occurs.

There is no prescription of the types of farm consolidation contemplated.

(b) Status of Farm Help Dwelling

Farm help dwellings have been used in farm operations as residences for temporary or occasional occupancy of farm workers or as residences for farm family members who work on the farm. Typically, these are accessory second dwellings on a farm that are not located on separate severed lots.

Food Land Guideline, 1978

The Food Land Guideline includes a seemingly contradictory statement under the section dealing with farm-related severances. It states that a severance may be considered:

If a residential lot is required to provide accommodation for full-time help - this may be for hired help or family members (son or daughter) whose working activity is primarily devoted to the farm operation and where the nature of the farm operation requires this help to be accommodated close to the farm. This accommodation should be provided as part of the farm unit rather than on a separate lot. The accommodation could be a conventional dwelling or a mobile home.

The guideline allows for a residential lot for “full-time help”. Then, it clearly states that the residence should be part of the farm “rather than a separate lot”. There is no clear direction to the municipality.
Appendix "C" to Report PED12069
(Page 12 of 18)

Comprehensive Set of Provincial Policy Statements, 1994

The Implementation Guidelines state in Policy D1 that in the
designated prime agricultural areas, the primary agricultural uses
include "one farm house, and additional houses for full-time farm
help and seasonal help, provided they are needed on the farm and
such houses are not severed."

The provincial interest is that farm help dwellings should remain as
part of the farm. It is taken from this that in the definition of
"residence surplus to farming operations", if a second farm
dwelling, as a farm-help house, was built prior to 1978, then it still
could be severed on its own lot, if it is surplus to the operation not
as part of a farm consolidation.

Provincial Policy Statement, 1996

The provincial policy statement is silent on farm help dwellings, but
states that the only new lots in prime agricultural areas are for
farm retirement, surplus farm dwelling, and infilling. The definition
of "residence surplus to a farming operation" provides that a
second farm residence built before 1978 could be severed on its
own lot if it is surplus to the operation. The vagueness of this policy
would allow the municipality to consider surplus farm help dwellings
as surplus farm dwellings and it could be severed.

Oak Ridges Moraine Conservation Plan, 2001

The Plan considers "a second dwelling that is a temporary, mobile
or portable unit" as accessory to agricultural uses. The Plan also
states that this dwelling is permitted, if it does require a consent.

This is the first definitive provincial statement that a farm help
dwelling is an accessory use on the farm and it is not intended to
be severed from the farm. However, the definition of "residence
surplus to a farming operation" continues to provide that a second
dwelling on a farm built before 1978 may be severed on its own lot
if it is surplus to the operation not part of a farm consolidation. This
could be interpreted to allow for the conversion of a farm help
dwelling to a permanent occupancy residential dwelling and would
likely qualify as a surplus farm dwelling and a severance.
Greenbelt Plan, 2004

This Plan defines “Agricultural Uses” to include “associated on-farm buildings and structures, including accommodation for full-time farm labour when the size and nature of the operation require additional employment.”

The intent here is that the farm help dwelling is part of and accessory to the farming operation in the entire Protected Countryside. It is not intended to be a primary residence on a farm. Furthermore, the definition of a “residence surplus to farming operation” no longer considers that a second dwelling on a farm that is surplus to an operation may be severed on its own lot. This is the first provincial policy where the previous provision was not included and therefore the severance of a surplus farm help dwelling is not in the provincial interest.

Provincial Policy Statement, 2005

This statement has the same definition of “agricultural uses” as the Greenbelt Plan, and considers farm help dwellings as accessory to the farming operations in prime agricultural areas. It is not in the provincial interest that surplus farm help dwellings are severed.

Growth Plan for the Greater Golden Horseshoe

This Plan does not have policies that deal with farm help dwellings.

Niagara Escarpment Plan Amendment, 2011

This Plan, as amended, provides, in section 2.4.17, that where there is more than one dwelling on the same lot, the additional dwelling(s) may not be severed or retained if they “were approved on the basis that they would be for temporary use or for farm help.”

In the case of a surplus farm dwelling through a farm consolidation, section 2.4.23 provides that the surplus residence cannot be severed if it was not “originally approved on the basis that it was for temporary use or farm help.”
Section 2.10 Agriculture, provides for dwelling units accessory to agriculture for farm help, but a separate lot shall not be created for it.

The latest iteration of provincial policy makes it clear that a farm help dwelling is accessory to a farm, and if it was originally approved or created for the purposes of farm help, it must stay with the farm and not be severed on its own lot, even if it is considered surplus as a result of a farm consolidation.

5. **Disposition of the Questions**

**Question (a)**

Since the first statement of provincial interest, a “farm consolidation” is interpreted as a situation where farm properties are acquired and incorporated into an existing farm/farming operation. I conclude from analysing the evolution of provincial policies and definitions, that the farm parcels that are acquired are intended to be in discrete locations rather than abutting each other. Municipalities may allow surplus farm dwelling severances if abutting farms are consolidated.

The guidelines and policies do not clarify that merging of two abutting farm parcels is what was in the mind of the province in various iterations when speaking about “farm consolidation”, but leaves this issue to the municipality in its official plan to establish policies for merging farms and severing a surplus farm dwelling. Where “farm consolidation” is a consideration in official plans, typically municipal policy does not consider the acquisition of discrete farm parcels.

The 1980 Hamilton-Wentworth Official Plan, as amended, does include policies for surplus farm dwelling severances. These severance policies apply to the consolidation of abutting farms. There is no official plan policy that considers the surplus farm dwelling from a discrete farm that had been consolidated into a farm operation.

There are no provisions in the 1980 Hamilton-Wentworth Official Plan that allows for the severance of a surplus farm dwelling from a farm that did not originally merge on title with another abutting farm parcel. This is an example where the provincial policy in effect in 1980 (Food Land Guideline) was interpreted differently by the municipality, although
consistently with the provincial guideline.

The 1995 Hamilton-Wentworth Official Plan generally leaves the policies for “consolidation of agricultural lands” and “surplus farm houses” to the discretion of the area municipalities in their official plans (Policy D-8.1).

The Glanbrook Official Plan, in Policy D.2.2.9, allows for severances of a surplus farm dwelling where there is a farm consolidation of abutting farms only.

The Flamborough Official Plan, in Policy B.2.8, allows for severances of a surplus farm dwelling where there is a farm consolidation. There is no apparent distinction regarding the type of farm consolidation.

The 2006 Rural Hamilton Official Plan, as modified and approved in part in 2009, is proposed by Hamilton Council to be further modified in response to various appeals to the Ontario Municipal Board.

Policy F.1.14.2 sets out the policies for Lot Creation. Farm Consolidation policies allow for the merging in title of abutting farm parcels and for the merging in title of discrete farm parcels.

Policy F.1.14.2.2 allows that a residence surplus to a farming operation “As a result of a farm consolidation may be severed”, subject to various pre-conditions.

It is clear that the intent of the policy is to require that the declaration of a surplus farm residence and the severance application is required to occur after the farm consolidation takes place.

Question (a) is answered as follows:

A severance for a surplus farm dwelling on its own lot must be considered and consented to by the authority, subject to the policies of the official plan, when the owner has acquired the farm as part of a farm consolidation, and only afterwards determines that an existing farm dwelling located on the farm that is part of the consolidation is surplus to the needs of the farming operation.
Question (b)

In the analysis of provincial guidelines, policies and plans up until 2005, when Greenbelt Plan and Provincial Policy Statement 2005 came in effect, it does appear that a farm help dwelling, built prior to 1978, could be severed as a surplus residence from a farm. There is no precondition that a farm consolidation needs to take place.

Since March 1, 2005, the severance of a farm help dwelling as a surplus farm dwelling without farm consolidation is not considered to be in the provincial interest. The severance of a farm help dwelling under any circumstances is no longer intended to be permitted by planning policy.

It has always been intended that a farm help dwelling is accessory to the main farm operation and that it is to be used for temporary farm workers or family farm employees, and it is not a principal farm dwelling.

The 1980 Hamilton-Wentworth Official Plan did include policies for farm help dwellings and their severance. Severances of these farm help dwellings were not permitted except where after ten years a child of the farmer needed the residence to work on the farm. It was clear that a farm help dwelling in the Hamilton policy originally intended that this dwelling remains with the farm. There was no policy that tied the severance of a farm help dwelling to a farm consolidation or a surplus farm dwelling.

The 1995 Hamilton-Wentworth Official Plan leaves the discretion of how to deal with farm help dwelling to the area municipalities in their official plans.

The Glanbrook Official Plan, in Policy B.1.1.8, allows for one permanent farm-help house as accessory to a farm operation without a severance. Any number of seasonal help houses are permitted.

The Flamborough Official Plan, in Policy B.24, allows a permanent or temporary help house as accessory to the principal use on a farm. There is no explicit policy that allows a severance of a help house.

In the Flamborough and Glanbrook zoning bylaws, help houses are permitted accessory uses to a farm operation. In each bylaw, the help house is distinguished from one permitted single detached dwelling on a farm and consequently it is not the principal residence on the farm. For
zoning purposes, a help house cannot legally convert to a single detached dwelling. There may be situations where the use of an original farm help house is legal non-conforming.

The 2006 Rural Hamilton Official Plan as modified and approved in part in 2009 deals with farm help dwellings. Policy F.2.1.1.4 provides that the severance of a “farm labour residence” shall not be permitted.

A “Farm Labour Residence” is a defined term as follows:

secondary accommodations provided for full-time farm labour where the size and nature of the farm operation requires additional employment in the form of either of the following:

(a) an accessory apartment attached to and forming part of the principal farm residence; or

(b) an accessory detached dwelling of temporary construction, such as a mobile home, located in close proximity to the farm cluster and serviced by the same private sewer and water systems used by the principal farm residence.

These policies allow a farm help dwelling for full-time labour and do not allow for a farm help dwelling for part-time or temporary employees. Furthermore, a detached farm help dwelling must be a temporary structure in order to avoid permanency.

Question (b) is answered as follows:

A farm help dwelling that originally was constructed on a farm, and that is a legal use of the building, is an accessory use on the farm, is not considered as a principal farm residence and therefore cannot be determined as a “residence surplus to a farming operation” as a result of a farm consolidation.
Appendix References Cited

City of Hamilton. Township of Glenbrook Official Plan.
City of Hamilton. Township of Flamborough Official Plan.
City of Hamilton. Township of Glenbrook Zoning By-law No. 464.
City of Hamilton. Township of Flamborough Zoning By-law No. 90-145-Z.

March 26, 2012.